



IOWA ADMINISTRATIVE BULLETIN

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It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor	Fax:	(515)281-8157
		(515)281-4424

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan. 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Friday, December 2, 2005	December 21, 2005
14	Wednesday, December 14, 2005	January 4, 2006
15	Friday, December 30, 2005	January 18, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
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The Administrative Rules Review Committee will hold a special meeting on Monday, December 12, 2005, and Tuesday, December 13, 2005, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

- Information technology governance, adopt ch 20; 25.1, 25.2(1), 25.5,
25.7, 105.2, 105.10, Notice **ARC 4691B** 11/23/05
- Parking on capitol complex, 101.2, 101.3(2), 101.3(3),
101.5 to 101.7, 101.9(4), Filed **ARC 4690B** 11/23/05

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

- Anhydrous ammonia tanks—nameplates, certification, 43.6,
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- Grain dealers and warehouse operators; grain indemnity fund, chs 90 to 94, Filed **ARC 4655B** 11/23/05

ARTS DIVISION[222]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

- Arts council and related programs and services, rescind chs 1, 2, 5 to 13, 18, 20, 23;
adopt chs 1 to 5, 9, 12, 13, Notice **ARC 4696B** 11/23/05

CORRECTIONS DEPARTMENT[201]

- Jail facilities, amendments to ch 50, Filed **ARC 4693B** 11/23/05
- Temporary holding facilities, amendments to ch 51, Filed **ARC 4692B** 11/23/05

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

- Evidence of title, 9.2, Filed **ARC 4673B** 11/23/05
- Approval and customer use of satellite terminals, 24.5(1), 24.6, Notice **ARC 4672B** 11/23/05

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60.5, 60.6, Filed **ARC 4689B** 11/23/05Cosmetology arts and sciences examiners, 60.2(1)"f," Filed **ARC 4685B** 11/23/05

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61.8(3), 61.9, 64.2(2), Filed **ARC 4686B** 11/23/05Cosmetology arts and sciences examiners—temporary permits, 60.9, 60.10, Filed **ARC 4687B** 11/23/05Cosmetology arts and sciences examiners—fee increases, 62.1, 65.2(26), Filed **ARC 4688B** 11/23/05Cosmetology arts and sciences examiners—competency examination, 65.6, Notice **ARC 4684B** 11/23/05Hearing aid dispensers examiners—fee increases, 124.2(3), 125.1, Filed **ARC 4657B** 11/23/05Nursing home administrator examiners, 141.9(3)"a," 141.9(8), 144.2(28), 145.1, Notice **ARC 4612B** 11/9/05Speech pathology and audiology examiners—fee increases, 304.2(26), 305.1, Filed **ARC 4695B** 11/23/05Speech pathology and audiology examiners—competency examination, 304.5, Notice **ARC 4694B** 11/23/05Physician assistant examiners, 328.3(2)"c," 329.2(25), 330.1, Notice **ARC 4615B** 11/9/05**PUBLIC SAFETY DEPARTMENT[661]**

Bail enforcement, private investigation, and private security businesses,

rescind ch 2; adopt ch 121, Filed **ARC 4678B** 11/23/05

Iowa sex offender registry, 83.2(9), 83.2(10), 83.3(2)"c," 83.3(3), 83.3(6), 83.4(3)"b" and "c,"

83.4(5), 83.4(9), Filed **ARC 4676B** 11/23/05DNA database, adopt ch 156, Filed **ARC 4675B** 11/23/05Retail sales of pseudoephedrine, adopt ch 174, Filed **ARC 4677B** 11/23/05**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

License revocation; audits; compliance with state fire and building codes; trifecta wagering,

1.2(2)"a," 4.4(4), 5.2, 5.4(7), 5.4(18), 8.2(13)"g," Filed **ARC 4608B** 11/9/05**REVENUE DEPARTMENT[701]**Interest rate for calendar year 2006, 10.2(25), Notice **ARC 4680B** 11/23/05

Tax credits—historic preservation and cultural and entertainment business,

eligible housing business, endow Iowa, 39.1(7), 42.13(1), 42.13(2), 42.15, 42.20, 42.23"12,"

52.12"8," 52.15(1), 52.15(2), 52.18, 52.23, 58.8, 58.8(1), 58.8(2), 58.10, 58.13, Filed **ARC 4614B** 11/9/05Wage-benefits tax credit, 42.24, 52.25, 58.14, Notice **ARC 4682B** 11/23/05

Wind energy production tax credit; renewable energy tax credit, 42.25, 42.26, 52.26, 52.27,

58.15, 58.16, Notice **ARC 4681B** 11/23/05

Property taxes; property tax assessment appeal board, 70.12, 71.3, 71.20(4)"a," 71.20(4)"c"(4),

71.21, 71.22, 71.26, 72.16(1), 73.33, 74.8(1), 75.2, 78.8, 80.1(2)"l," 80.1(4)"h,"

80.2(2)"c," "d," "t" and "u," 80.2(3)"e," 80.4(5), 80.4(8), 80.13(2), 80.14(3), 80.19 to 80.22,

123.3, 123.4, Notice **ARC 4613B** 11/9/05**SECRETARY OF STATE[721]**

Address corrections; rescission of waste tire hauler rules, 1.2(3), 1.6(4), 3.4, 4.1, 4.1(2),

7.5(1), 7.6(2), 7.11(1), 8.1, 8.3, 9.1, 9.3(3), 9.5, 9.6(2), 40.1, 42.2 to 42.4;

rescind chs 44, 45, Notice **ARC 4656B** 11/23/05

Voting systems—security, HAVA requirements, electronic voting machine equipment, ch 22 title,

22.31, 22.39, 22.42, 22.50, ch 22 div title, 22.101, 22.102(3), 22.102(8), 22.102(9), 22.200,

22.200(3), 22.201, 22.231, 22.232, 22.232(6), 22.232(7), 22.240, 22.240(3), 22.240(4), 22.241,

22.250, 22.251, 22.260, 22.261, 22.340, 22.341, 22.350, 22.431, 22.431(1), 22.431(4), 22.432,

22.433, 22.463, 22.500, Filed **ARC 4679B** 11/23/05

TRANSPORTATION DEPARTMENT[761]

Registration and title—general, 400.1, 400.2(8), 400.3, 400.4(1)“c,” 400.4(6), 400.5(2), 400.6 to 400.9, 400.11, 400.12(2), 400.13, 400.14(5), 400.16, 400.17, 400.20, 400.21(3), 400.25, 400.27(4)“c,” 400.29, 400.33, 400.35, 400.43, 400.44, 400.45(1), 400.50 to 400.52, 400.53(2), 400.55, 400.58, 400.60, 400.61, 400.64, 401.1, 401.2, 401.4 to 401.7, 401.11 to 401.13, 401.15(1), 401.16, 401.17(4) to 410.17(6), 401.20, 401.27 to 401.30, 401.32 to 401.36, 411.1, 411.2, 411.3(1)“b,” 411.6, 425.1(2), 425.3, 425.10(1), 425.10(8), 425.17, 425.26(2)“b,” 425.26(5), 425.29(2), 425.30, 425.31(1), 425.50(1), 425.50(2)“b,” 425.52(1)“a,” 425.72, 451.1, 451.2, 750.2, 750.3, 750.10(2), 750.15, 750.20, Filed **ARC 4671B** 11/23/05
 Airport improvement program, 710.1, 710.3 to 710.5, Notice **ARC 4610B** 11/9/05
 General aviation airport vertical infrastructure program, 717.2 to 717.4, 717.7, 717.8, 717.10, Notice **ARC 4611B** 11/9/05

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”
 Revised procedural rules, 1.8(4); chs 7, 26; 32.9(4), Filed **ARC 4617B** 11/9/05
 Quality of service reporting by eligible telecommunications carriers, 39.3(1)“b,” 39.5, Filed **ARC 4616B** 11/9/05

WORKERS’ COMPENSATION DIVISION[876]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”
 Forms; compliance proceedings; contested cases; settlements and commutations; mileage reimbursement rate, 3.1(1), 4.3, 4.9(1), 4.9(3), 4.19(3)“a,” 4.25, 4.28(7), 6.3(1) table, 6.3(3), 6.3(3) table, 8.1“2,” 11.2, Filed **ARC 4674B** 11/23/05

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR’S NOTE: Terms ending April 30, 2007.

Senator Jeff Angelo
 P.O. Box 604
 Creston, Iowa 50801

Senator Michael Connolly
 3458 Daniels Street
 Dubuque, Iowa 52002

Senator John P. Kibbie
 P.O. Box 190
 Emmetsburg, Iowa 50536

Senator Mary Lundby
 P.O. Box 648
 Marion, Iowa 52302-0648

Senator Paul McKinley
 21884 483rd Lane
 Chariton, Iowa 50049

Joseph A. Royce
Legal Counsel
 Capitol, Room 116A
 Des Moines, Iowa 50319
 Telephone (515)281-3084
 Fax (515)281-5995

Representative Danny Carroll
 244 400th Avenue
 Grinnell, Iowa 50112

Representative George Eichhorn
 P.O. Box 140
 Stratford, Iowa 50249

Representative Marcella R. Frevert
 P.O. Box 324
 Emmetsburg, Iowa 50536

Representative David Heaton
 510 East Washington
 Mt. Pleasant, Iowa 52641

Representative Geri Huser
 213 Seventh Street NW
 Altoona, Iowa 50009

Sonya Streit
Administrative Rules Coordinator
 Governor’s Ex Officio Representative
 Capitol, Room 11
 Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ADMINISTRATIVE SERVICES DEPARTMENT[11]		
Information technology governance, adopt ch 20; 25.1, 25.2, 25.5, 25.7, 105.2, 105.10 IAB 11/23/05 ARC 4691B	Conference Room 04, Level A South Hoover State Office Bldg. Des Moines, Iowa	December 13, 2005 11 a.m.
ARTS DIVISION[222]		
Public access to council programs, rescind chs 1, 2, 5 to 13, 18, 20, 23; adopt chs 1 to 5, 9, 12, 13 IAB 11/23/05 ARC 4696B	Tone Board Room Third Floor West Historical Bldg. Des Moines, Iowa	December 13, 2005 10 a.m.
CREDIT UNION DIVISION[189]		
Satellite terminals, 24.5(1), 24.6 IAB 11/23/05 ARC 4672B	Division Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	December 13, 2005 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Applicants from recognized non-Iowa institutions, 14.103, 14.115, 14.120(1) IAB 11/9/05 ARC 4607B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 29, 2005 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air pollution—equipment and processes for which construction permits are not required, 20.2, 22.1(2) IAB 11/9/05 ARC 4651B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	December 12, 2005 1 p.m.
Fee structure for wastewater permits, 64.16 IAB 11/9/05 ARC 4652B (ICN Network)	ICN Room, Sixth Floor Department of Public Health Lucas State Office Bldg. Des Moines, Iowa	November 29, 2005 10 a.m.
	LeMars Community High School 921 Third Ave. SW LeMars, Iowa	November 29, 2005 10 a.m.
	High School 710 W. Main New Hampton, Iowa	November 29, 2005 10 a.m.
	Alden High School 1903 N. Taylor Iowa Falls, Iowa	November 29, 2005 10 a.m.
	Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	November 29, 2005 10 a.m.
	High School 501 N. Grand Chariton, Iowa	November 29, 2005 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)
(ICN Network)

	Great River AEA 16 3601 West Ave. Burlington, Iowa	November 29, 2005 10 a.m.
	ICN Room, Sixth Floor Department of Public Health Lucas State Office Bldg. Des Moines, Iowa	November 30, 2005 2 p.m.
	Iowa Central Community College 916 N. Russell Storm Lake, Iowa	November 30, 2005 2 p.m.
	NIACC – 1 500 College Dr. Mason City, Iowa	November 30, 2005 2 p.m.
	Public Library 304 N. Franklin St. Manchester, Iowa	November 30, 2005 2 p.m.
	Southwestern Community College – 1 1501 W. Townline Rd. Creston, Iowa	November 30, 2005 2 p.m.
	Saydel High School 5601 NE Seventh St. Des Moines, Iowa	December 1, 2005 7 p.m.
	Public Library 21 E. Third St. Spencer, Iowa	December 1, 2005 7 p.m.
	St. Edmond High School 501 N. 22nd St. Fort Dodge, Iowa	December 1, 2005 7 p.m.
	High School 800 Third Ave. Audubon, Iowa	December 1, 2005 7 p.m.
	Kimberly Center 1002 Kimberly Davenport, Iowa	December 1, 2005 7 p.m.
	Prairie High School 401 76th Ave. SW Cedar Rapids, Iowa	December 1, 2005 7 p.m.
Major water sources, ch 65 table 1 IAB 11/9/05 ARC 4649B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 1, 2005 1:30 p.m.
Solid waste comprehensive planning requirements, 101.12 to 101.14 IAB 11/9/05 ARC 4650B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 2, 2005 10 a.m. to 12 noon

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Regional collection centers and mobile unit collection and consolidation centers; financial assistance for collection of household hazardous materials and hazardous waste from conditionally exempt small quantity generators, chs 123, 211 IAB 11/9/05 ARC 4648B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 5, 2005 1 to 2 p.m.
Compliance inspector certification program; annual inspection of underground storage tank system, ch 134 title, 134.6 to 134.17, 135.20 IAB 11/9/05 ARC 4653B	Public Library 1401 Fifth St. Coralville, Iowa	November 29, 2005 1 p.m.
	Community Hall 111 N. Main St. Denison, Iowa	November 30, 2005 1 p.m.
	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 2, 2005 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Barbers, 21.16(3), 25.2(26), 26.1 IAB 11/23/05 ARC 4670B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	December 13, 2005 9:30 to 10 a.m.
Chiropractic physicians, 41.8(2), 44.3(2), 45.2(25), 46.1 IAB 11/9/05 ARC 4606B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	November 29, 2005 9 to 9:30 a.m.
Cosmetology arts and sciences examiners—competency examination, 65.6 IAB 11/23/05 ARC 4684B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	December 23, 2005 1 to 1:30 p.m.
Nursing home administrators, 141.9, 144.2(28), 145.1 IAB 11/9/05 ARC 4612B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	November 29, 2005 8:30 to 9 a.m.
Speech pathologists and audiologists—competency examination, 304.5 IAB 11/23/05 ARC 4694B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 3, 2006 9 to 9:30 a.m.
Physician assistants, 328.3(2), 329.2(25), 330.1 IAB 11/9/05 ARC 4615B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	November 29, 2005 9:30 to 10 a.m.

TRANSPORTATION DEPARTMENT[761]

Airport improvement program, 710.1, 710.3 to 710.5 IAB 11/9/05 ARC 4610B	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	December 1, 2005 10 a.m. (If requested)
General aviation vertical infrastructure program, amendments to ch 717 IAB 11/9/05 ARC 4611B	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	December 1, 2005 11 a.m. (If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
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 Alcoholic Beverages Division[185]
 Banking Division[187]
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 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
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 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
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 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
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 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
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 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
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 EXECUTIVE COUNCIL[361]
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 HUMAN INVESTMENT COUNCIL[417]
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 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
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 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

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INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
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VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 4691B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby gives Notice of Intended Action to adopt new Chapter 20, “Information Technology Governance,” and to amend Chapter 25, “Information Technology Operational Standards,” and Chapter 105, “Procurement of Goods and Services of General Use,” Iowa Administrative Code.

The purpose of this new chapter and the amendments to Chapters 25 and 105 is to implement 2005 Iowa Acts, House File 839, signed by the Governor on April 29, 2005. House File 839 establishes the Technology Governance Board in place of the Information Technology Council. New Chapter 20 sets forth the operations of the Technology Governance Board. Establishment of the Board also requires the Department to revise its process for developing and approving enterprise information technology operational standards and the process for agencies to obtain approval of major information technology procurements.

The Technology Governance Board established within the Department of Administrative Services will formally require state agencies to focus on a business perspective regarding the deployment of information technology across state government. The primary benefit of the Board will be more effective management of the state’s information technology resources by taking a coordinated, enterprise approach. The Board is responsible for:

- Working with the Department to prepare budgets and manage the funds made available for information technology,
- Preparing an annual report for the legislature on information technology spending and savings,
- Developing and approving administrative rules for the Department governing the activities of the Board,
- Developing and adopting enterprise information technology standards,
- Approving major information technology-related request for proposals (RFP) procurements for participating agencies,
- Reviewing and approving the recommendations of the Iowa Access Advisory Council regarding rates to be charged for access to and for value-added services performed through Iowa Access,
- Establishing appropriate advisory groups, and
- Making recommendations to the Department on services and technology initiatives for the executive branch.

The Board includes the Director of the Department of Administrative Services as the permanent chair; the Director of the Department of Management, or the Director’s designee, as a permanent member; six state agency representatives, preferably a director, deputy director, or chief financial officer (three representatives from large agencies, two from medium-sized agencies and one from a small agency); and two public members. Members of the Board are appointed

by the Governor and serve staggered two-year terms. The public members are subject to Senate confirmation.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 13, 2005. Interested persons may submit written, oral or electronic comments by contacting Marianne Mickelson, Acting Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6904; fax (515)281-6140; E-mail Marianne.Mickelson@iowa.gov.

Also, there will be a public hearing on December 13, 2005, at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these amendments. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These amendments are intended to implement 2005 Iowa Acts, House File 839.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** chapter:

CHAPTER 20**INFORMATION TECHNOLOGY GOVERNANCE****11—20.1(81GA, HF839) General provisions.**

20.1(1) Establishment. The technology governance board is established within the department of administrative services by 2005 Iowa Acts, House File 839.

20.1(2) Mission. The mission of the technology governance board is to set priorities for statewide technology investments and initiatives and to assist the department of management and the state’s chief information officer in developing a statewide information technology budget. The budget shall reflect the total information technology spending of the executive branch, resulting in better decision making and financial investment performance reporting.

11—20.2(81GA, HF839) Definitions. For the purpose of this chapter, the following definitions apply:

“Agency” or “state agency” means a participating agency as defined in Iowa Code section 8A.201.

“Board” means the technology governance board.

“Department” means the department of administrative services, including the information technology enterprise.

“Director” means the director of the department of administrative services.

“Iowa Access advisory council” means the council established pursuant to Iowa Code section 8A.221.

“Large agency” means a state agency with more than 700 full-time, year-round employees.

“Medium-sized agency” means a state agency with 70 or more full-time, year-round employees, but not more than 700 full-time, year-round employees.

“Small agency” means a state agency with less than 70 full-time, year-round employees.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

11—20.3(81GA, HF839) Membership of the board.

20.3(1) Composition. The technology governance board is composed of ten members as follows:

- a. The director.
- b. The director of the department of management, or the designee of the director of the department of management.
- c. Eight members appointed by the governor as follows:
 - (1) Three representatives from large agencies.
 - (2) Two representatives from medium-sized agencies.
 - (3) One representative from a small agency.
 - (4) Two public members who are knowledgeable and have experience in information technology matters.
- d. A director, deputy director, chief financial officer or the equivalent is preferred as an appointed representative for each of the agency categories of membership pursuant to paragraph "c."

e. Appointments of public members to the board are subject to Iowa Code sections 69.16 and 69.16A governing balance in political affiliation and gender of members of appointed boards.

20.3(2) Length of term. Members appointed to the board pursuant to paragraph 20.3(1)"c" shall serve two-year fixed terms.

a. Initial member terms. In order to stagger terms of board members so that one-half of the terms expire each year, four of the eight members appointed by the governor shall serve initial terms of no longer than one year. Designation of which members are appointed to the initial staggered terms shall be at the discretion of the governor.

b. Agency member terms. Terms of the agency members appointed pursuant to paragraph 20.3(1)"c" shall expire on April 30 of the last year of the member's term. New terms shall begin on May 1.

c. Public member terms. The public members of the board are subject to Iowa Code section 69.19, requiring senate confirmation and terms that expire on April 30 of the year of term expiration. New terms of the public members shall begin on May 1.

11—20.4(81GA, HF839) Compensation of members.

20.4(1) A member shall be reimbursed for actual and necessary expenses incurred in performance of the member's duties.

20.4(2) Public members appointed by the governor may be eligible to receive compensation as provided in Iowa Code section 7E.6.

11—20.5(81GA, HF839) Officers of the board.

20.5(1) The director shall serve as the permanent chair of the board.

20.5(2) The technology governance board annually shall elect a vice chair from among the members of the board, by majority vote, to serve a one-year term.

11—20.6(81GA, HF839) Meetings of the board.

20.6(1) Meetings of the board shall be held at the call of the chairperson or at the request of three members. However, the board shall meet no less than monthly for the one-year period following the appointment of all members.

20.6(2) A majority of the members of the board shall constitute a quorum.

20.6(3) Meetings of the board are subject to the open meetings provisions of Iowa Code section 21.3.

11—20.7(81GA, HF839) Correspondence and communications. The office of the technology governance board is maintained in the office of the department of administrative

services. Correspondence and communications to the board shall be directed in care of the Iowa Department of Administrative Services, Information Technology Enterprise, Hoover State Office Building, Level B, Des Moines, Iowa 50319.

11—20.8(81GA, HF839) Powers and duties of the board.

20.8(1) Spending and savings report. On an annual basis, the board shall prepare a report to the governor, the department of management, and the general assembly regarding the total spending on technology for the previous fiscal year, the total amount appropriated for the current fiscal year, and an estimate of the amount to be requested for the succeeding fiscal year for all agencies. The report shall include a five-year projection of technology cost savings, an accounting of the level of technology cost savings for the current fiscal year, and a comparison of the level of technology cost savings for the current fiscal year with that of the previous fiscal year. This report shall be filed as soon as possible after the close of a fiscal year, and by no later than the second Monday of January of each year.

20.8(2) Budget and accounts. The board shall work with the department of management and the state accounting enterprise of the department, pursuant to Iowa Code section 8A.502, to maintain the relevancy of the central budget and proprietary control accounts of the general fund of the state and special funds to information technology, as those terms are defined in Iowa Code section 8.2.

20.8(3) Rules. The board shall develop and approve administrative rules governing the activities of the board to be adopted under the department's name.

20.8(4) Standards. In conjunction with the department, the board shall develop and adopt standards with respect to procurement of information technology that shall be applicable to all agencies.

20.8(5) Service and initiative recommendations. The board shall make recommendations to the department regarding all of the following:

a. Technology utility services to be implemented by the department or other agencies.

b. Improvements to information technology service levels and modifications to the business continuity plan for information technology operations developed by the department pursuant to Iowa Code section 8A.202 for agencies, and to maximize the value of information technology investments by the state.

c. Information technology initiatives for the executive branch.

20.8(6) Fees for electronic access. The board shall review fee proposals for value-added services from state agencies and other governmental entities that have been recommended to the board by the lowAccess advisory council and shall submit decisions regarding such fees approved by the board to the department of management. In establishing the fees for value-added services, the board shall consider the reasonable cost of creating and organizing government information into a gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.

20.8(7) Advisory groups. The board shall designate advisory groups as appropriate to assist the board in all of the following:

a. Development and adoption of an executive branch strategic technology plan.

b. Annual review of technology operating expenses and capital investment budgets of agencies by October 1 for the

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following fiscal year, and development of technology costs savings projections, accountings, and comparison.

c. Quarterly review of requested modifications to information technology budgets of agencies due to funding changes.

d. Review and approval of all requests for proposals prior to issuance for all information technology devices, hardware acquisitions, information technology services, software development projects, and information technology outsourcing for agencies that exceed the greater of a total cost of \$50,000 or a total involvement of 750 agency staff hours.

e. Development of a plan and process to improve service levels and continuity of business operations, and to maximize the value of information technology investments.

f. Formation of internal teams to address cost-savings initiatives, including consolidation of information technology and related functions among agencies, as enacted by the technology governance board.

g. Development of information technology standards.

h. Development of rules, processes, and procedures for implementation of aggregate purchasing among agencies.

These rules are intended to implement 2005 Iowa Acts, House File 839.

ITEM 2. Amend rule **11—25.1(8A)** as follows:

Amend the definition of “operational standards” as follows:

“Operational standards” means information technology standards, including *but not limited to* system design, system integration, ~~and specifications, requirements, processes or initiatives that foster compatibility,~~ interoperability, ~~but not including procurement standards~~ connectivity, and use of information technology devices and services among participating agencies. *Operational standards specify:*

1. *The performance that is required to be acceptable in accordance with specific operational criteria.*

2. *The technological features with which information technology products or services must comply to ensure compatibility, interoperability or connectivity among state agencies.*

Amend the definition of “participating agency,” numbered paragraph “6,” as follows:

6. The Iowa lottery authority.

Add the following **new** definition:

“Technology governance board” means the board established by 2005 Iowa Acts, House File 839, section 3.

ITEM 3. Amend subrule 25.2(1) as follows:

25.2(1) The department is required to develop, in consultation with the ~~information technology council as established in 2003 Iowa Code Supplement section 8A.204~~ technology governance board, and implement information technology ~~and~~ operational standards through a process as set forth in this chapter. It is the intent of the general assembly that information technology standards be established for the purpose of guiding the procurement of information technology by all participating agencies.

ITEM 4. Amend rule 11—25.5(8A) as follows:

11—25.5(8A) Development of operational standards.

25.5(1) Recommendation of operational standards. ~~The director is charged with recommending standards. The department and the technology governance board shall develop recommended information technology operational standards that shall be subject to consideration through the public input process established pursuant to rule 25.7(8A).~~

25.5(2) Implementation of operational standards. The department ~~and the technology governance board shall implement jointly approve~~ information technology standards which are applicable to information technology operations by participating agencies, including but not limited to system design and systems integration and interoperability pursuant to ~~2003 Iowa Code Supplement~~ section 8A.202. ~~The director is charged with prescribing and adopting information technology operational standards.~~

25.5(3) Effective date of operational standards. ~~Operational standards are effective upon 24 hours of final posting unless otherwise specified. Requirement for operational standards. Operational standards shall be developed regarding information technology issues that affect multiple participating agencies. Examples of situations where establishing an operational standard would result in potential advantage to the state include, but are not limited to:~~

a. *Promoting knowledge transfer and reducing learning curves for new technology solutions,*

b. *Protecting and securing the state’s information technology infrastructure and data,*

c. *Reducing the resources applied to technology solutions,*

d. *Streamlining the state’s common information technology systems and infrastructure,*

e. *Streamlining the delivery of information or services by promoting consistency in the handling, collection, transport, or storage of data and information, or*

f. *Promoting potential short- or long-term cost savings or cost avoidance.*

25.5(4) Basis for operational standards. Operational standards may be based on any of the following:

a. *Best practice guidelines. Standards based on best practice guidelines means that a case study or analysis is used to provide a benchmark for good business and information technology practices in achieving a desired result. The analysis or case study highlights one or several proposed products, technology fields, analytical methodologies or information technology solutions which constitute a good approach for other entities pursuing similar solutions. Best practice guidelines are intended to:*

(1) *Be informational,*

(2) *Facilitate knowledge transfer, and*

(3) *Shorten the learning curve for other entities addressing common technology issues.*

b. *Policy. Standards based on policy means that the operational standards are based on a description of required or prohibited courses of action or behavior with respect to the acquisition, deployment, implementation, or use of information technology resources.*

c. *Procedure. Standards based on procedure means that the operational standards are based on a set of administrative instructions for implementation of a policy or standards specifications.*

d. *Standards specifications. Standards based on specifications means that the operational standards are based on a description of specific required technical approaches, solutions, methodologies, products or protocols which must be adhered to in the design, development, implementation or upgrade of systems architecture, including hardware, software and services and a description of those prohibited. Standards are intended to establish uniformity in common technology infrastructures, applications, processes or data. Standards may be developed as a subset of, and within the context of, a broader technology policy. Standards may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by*

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state government entities subject to compliance with the operational standards specifications.

25.5(5) Goals for information technology standards. The underlying purpose of operational standards involving information technology shall be one or more of the following:

- a. To promote consistency in the automation of the state's common infrastructure systems;
- b. To eliminate duplicative development efforts by multiple state government entities;
- c. To ensure continuity of ongoing state operations;
- d. To promote administrative efficiencies relating to development and maintenance of common data; and
- e. To enable the state to realize its full purchasing power from the use of a statewide, enterprise approach to the selection of technology solutions.

25.5(6) Evaluating compliance with operational standards. In evaluating compliance with operational standards, the technology governance board shall consider the following criteria:

a. *Current technology.* A proposed technology solution should be consistent with the statewide technology direction.

(1) A technology solution should promote the goals set forth in subrule 25.5(5).

(2) A technology solution should be current and reflect industry trends or best practice guidelines.

(3) The proposed technology solution should offer potential for a long life cycle, minimizing the risk of technological obsolescence.

b. *Existing technology deployments.* When state government entities have already made an investment in the proposed technology solution, the following issues shall be considered:

(1) The size and scope of existing deployments of the technology solution among state government entities (the installed base).

(2) Current fiscal investment associated with the installed base.

(3) Acquisition, development and deployment time frames associated with developing the installed base.

c. *Maintenance of ongoing business operations.* The proposed technology solution should enhance the ability of state government entities to maintain ongoing business operations.

d. *Impact on state resources.* Considerations regarding state resources include the following:

(1) Administrative and fiscal resources required to implement the proposed technology solution.

(2) Deployment time frame to implement the proposed technology solution.

(3) The potential for cost savings or cost avoidance.

25.5(7) Effective date of operational standards. Operational standards are effective 24 hours after the time of final posting unless otherwise specified.

ITEM 5. Amend rule 11—25.7(8A) as follows:

11—25.7(8A) Review of operational standards by the public and period of public comment.

25.7(1) Interested members of the public may participate in the process of establishing standards by providing written comments to the ~~Administrator Enterprise IT Standards Coordinator, Information Technology Enterprise Department of Administrative Services, Legal, Rules and Planning, Hoover State Office Building, Level B A, Des Moines, Iowa 50319.~~ Comments will be accepted for a period of ten days after the initial posting of the standard by the department

on the department's Web site at <http://das.ite.iowa.gov/standards/index.html>.

25.7(2) Interested members of the public may inquire about standards currently being considered for recommendation by the director by telephoning the ~~information technology enterprise administrator IT standards coordinator~~ at (515) 281-5503 6904; in writing to ~~Information Technology Enterprise Department of Administrative Services, Legal, Rules and Planning, Hoover State Office Building, Level B A, Des Moines, Iowa 50319;~~ or by accessing the department's Web site at <http://das.ite.iowa.gov/standards/index.html>.

ITEM 6. Amend rule 11—105.2(8A) as follows:

Add the following **new** definition in alphabetical order:

“Board” means the technology governance board established by 2005 Iowa Acts, House File 839, section 3.

Amend the following definitions:

“Material modification” relating to an approved IT procurement means a change in the procurement of 10 percent or \$25,000 \$50,000, whichever is ~~more~~ less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome.

“Participating agency,” *applicable only to information technology purchases*, means any agency other than:

1. The the state board of regents and institutions operated under its authority;

2. The the public broadcasting division of the department of education;

3. The the department of transportation's mobile radio network;

4. The the department of public safety law enforcement communications systems and capitol complex security systems in use for the legislative branch; and

5. The the Iowa telecommunications and technology commission, with respect to information technology that is unique to the Iowa communications network;

6. The Iowa lottery authority; and

7. A judicial district department of correctional services established pursuant to Iowa Code section 905.2. ~~and is applicable only to information technology purchases.~~

ITEM 7. Amend rule 11—105.10(8A) as follows:

11—105.10(8A) Procurement of information technology devices and services. This rule applies to the procurement of information technology devices and services by participating agencies.

105.10(1) Approval of participating agency information technology procurements.

a. All procurement of information technology devices and services must meet operational standards prescribed by the department.

b. Procurement of all information technology devices and services, *projects and outsourcing* of \$50,000 or more or a total involvement of 750 participating agency staff hours or more must receive prior approval from the ~~department of administrative services, information technology enterprise (DAS/ITE), board~~ before a participating agency issues a competitive selection document or any other procurement document or otherwise seeks to procure information technology devices or services or both through the department or on its own purchasing authority. The *participating agency's* approval request shall be in a form prescribed by the ~~department board~~.

c. ~~DAS/ITE shall implement a postaudit review of information technology procurements of up to \$50,000 per claim. Participating agencies shall notify the board in writing on a quarterly basis that technology purchases made during the~~

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previous quarter were in compliance with the board's procurement rules and information technology operational standards.

d. Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements of this subrule.

105.10(2) Review process for proposed procurements.

a. The ~~department~~ *board* shall review a proposed information technology procurement of a participating agency regardless of funding source, method of procurement, or agency procurement authority.

b. The ~~department~~ *board* shall review a proposed procurement for compliance with operational standards established by the department.

c. Once a procurement is approved, ongoing approval by the ~~department~~ *board* is not required provided that the procurement or scope of work remains consistent with the previously approved procurement or scope of work.

d. Participating agencies shall obtain the ~~department's~~ *board's* approval anytime a material modification of the procurement or the scope of work is completed. Review and approval by the ~~department~~ *board* is required prior to ~~implementing implementation of~~ a material modification to a previously approved proposed procurement by a participating agency or by the department on behalf of a participating agency.

e. ~~After approved procurements are approval of the procurement is forwarded to the agency contact person and appropriate procurement authority contacts, the procurement may proceed.~~

f. When a procurement is not approved, the agency contact will be notified of available options, which include modification and resubmission of the request, cancellation of the request, or requesting a waiver from the director *on the recommendation of the board* pursuant to subrule 105.10(3).

g. The ~~department~~ *board* shall periodically audit procurements made by a participating agency for compliance with this rule and operational standards of the department. When the audit determines that inconsistencies with established operational standards or *with* this rule exist, the participating agency shall comply with ~~DAS~~ *board* directives to remedy the noncompliance and ~~shall submit all procurement requests to the department for approval for a term determined by the department.~~

h. Information technology devices and services not complying with applicable operational standards shall not be procured by any participating agency unless a waiver is granted by the director *on the recommendation of the board*.

i. Upon request by a participating agency, the department may procure, as provided by these rules, any information technology devices or information technology services requested by or on behalf of an agency and accordingly bill the agency through the department's regular process for the information technology devices or information technology services or for the use of such devices or services.

~~j. The department may provide pertinent advice to a procurement authority or participating agency regarding the procurement of information technology devices or services, including opportunities for aggregation with other procurements.~~

k.j. The department shall establish and maintain a Web page (<http://www.iowa.gov/government/ite/standards/enterprise-it/itprocurement.html>) (<http://das.ite.iowa.gov/standards/enterprise-it/index.html>) of current operational standards for information technology devices and services.

The Web page shall be updated from time to time with additions, deletions and modifications.

105.10(3) Waiver requests for operational standards.

a. Waiver requests. In the event a participating agency is advised that its proposed procurement is disapproved and the participating agency seeks a waiver of operational standards, it must file its written waiver request with the department within five calendar days of the date of the disapproval. The waiver request shall be filed pursuant to rule ~~11—Chapter 9~~ *11—25.6(8A)*.

b. Hearing. The department may conduct a hearing with the participating agency regarding the waiver request. Additional evidence may be offered at the time of the hearing. Oral proceedings shall be recorded either by mechanized means or by a certified shorthand reporter. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs. Copies of tapes of oral proceedings or transcripts recorded by certified shorthand reporters shall be paid for by the requester.

c. Burden of proof. The burden of proof is on the participating agency to show that good cause exists to grant a waiver to the participating agency to complete the proposed procurement.

d. The director shall notify the participating agency in writing of the decision to grant or deny the waiver. In the event a waiver is denied, the participating ~~new~~ agency may appeal pursuant to Iowa Code section 679A.19.

ARC 4696B**ARTS DIVISION[222]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby gives Notice of Intended Action to rescind Chapter 1, "Organization and Operation," Chapter 2, "Operating and Granting Policies," Chapter 5, "Traditional Arts Apprenticeship Program," Chapter 6, "Operational Support Grants to Major and Midsize Arts Organizations," Chapter 7, "Arts in Education Artists Roster," Chapter 8, "Minigrant Program," Chapter 9, "William H. Jackson Scholarship for the Arts," Chapter 10, "Project Support Grants for Organizations," Chapter 11, "Project Support Grants for Artists," Chapter 12, "Arts in Education Project Support Grants," Chapter 13, "Artists in Schools/Communities Residency Program," Chapter 18, "Artist Directory," Chapter 20, "Artsafe Program," and Chapter 23, "Art in State Buildings Program"; and adopt Chapter 1, "Organization and Operation," Chapter 2, "Operating and Granting Policies," Chapter 3, "Operational Support Partnership Program for Major Arts Organizations," Chapter 4, "Artist Directories and Rosters," Chapter 5, "Project Grant Programs," Chapter 9, "Iowa Arts Council Scholarship for the Arts," Chapter 12, "Artsafe Program," and Chapter 13, "Art in State Buildings Program," Iowa Administrative Code.

The proposed rules clarify the duties and responsibilities of the Iowa Arts Council regarding the implementation of

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Iowa Code chapter 303, subchapter VI, and chapter 304A. These rules establish the processes by which the public accesses the programs of the Council.

The proposed rules consolidate information about grant programs, directories, rosters, and other services into more readable and understandable language; delete program details that are unnecessarily specific and limiting at the administrative rules level; and define program structures that reflect the Council's constituent-driven priorities and its partnership emphasis.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on December 13, 2005. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; kathy.gourley@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-6913.

Also, there will be a public hearing on December 13, 2005, at 10 a.m. at the above address in the Tone Board Room, Third Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Cultural Affairs and advise of specific needs.

These rules are intended to implement Iowa Code chapter 303, subchapter VI, and chapter 304A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 222—Chapters 1, 2, 5 to 13, 18, 20, and 23 and adopt the following **new** chapters in lieu thereof:

CHAPTER 1 ORGANIZATION AND OPERATION

222—1.1(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 shall apply for terms as they are used throughout 222—Chapters 1 to 13. In addition, as used in 222—Chapters 1 to 13, the following definitions shall apply:

“Administrator” means the administrator of the arts division of the department of cultural affairs.

“Advisory panel” means a group of citizens appointed by the administrator to assist in any aspect of arts division programs or services.

“Applicant” means an incorporated city, county government, tribal council, or community group in Iowa or in a border city which is incorporated under the Iowa nonprofit corporation Act and which is federally tax-exempt; or an individual artist who is a legal resident of Iowa or a border city.

“Application” means a formal request, using arts division forms, for a grant or artist approval from an eligible applicant.

“Arts division” means the arts division of the department of cultural affairs.

“Border city” means a municipality with boundaries directly adjacent to one or more borders of the state of Iowa.

“Cash match” means the amount of actual cash provided by a recipient as part of the recipient's share of a project.

“Council” means the Iowa arts council.

“Department” means the department of cultural affairs.

“Director” means the director of the department of cultural affairs.

“Fiscal agent” means an organization that meets the definition of applicant and that administers grant funds for an organization which has not yet received its tax-exempt status.

“In-kind match” means donated goods and services provided by a recipient as part of the recipient's share of a project.

“Juried resource” means a printed or electronically produced resource of the arts division in which applicants are reviewed and recommended for inclusion in the resource by an advisory panel.

“Matching funds” means the program or project cost which shall be provided by the recipient either in kind or in cash.

“Project” means an eligible activity for which an organization or individual has submitted an application for grant funds for arts division approval.

“Recipient” means any applicant receiving funds from the arts division.

“Reviewer” means any individual appointed by the administrator to review applications to a grant program or arts division project.

“Support materials” means information submitted as supplemental to the formal application form.

222—1.2(303) Purpose. The council was established by Iowa Code section 303.86. The mission of the council is to enrich the quality of life and learning in Iowa communities by encouraging excellence in the arts through leadership, grants and technical assistance.

222—1.3(303) Location. The office of the Iowa arts council is located at the State Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, state holidays excepted. The telephone number is (515)281-8741. The Internet Web address is www.iowaartscouncil.org.

222—1.4(303) Council statement on freedom of expression. The council adopts the following mission statement regarding freedom of expression:

“The mission of the Iowa arts council is to advance the arts in Iowa for the benefit of all. Support of free speech is the centerpiece of this mission. The council is an advocate for and defender of the right of free speech by all citizens under the First Amendment of the Constitution of the United States.

“The council recognizes the need for public support of the arts and understands the responsibilities that accompany the allocation of public funds. The council seeks the advice of qualified Iowans through the use of advisory panels for funding recommendations. The council is committed to uphold and maintain the highest artistic standards and to encourage excellence in the arts.

“The council respects the integrity of an artist's personal vision and right to freedom of expression. The council rejects all attempts to control or censor the arts. Recognizing the diversity of viewpoints represented by Iowa communities, the council supports freedom of choice and access to the arts by all citizens.”

These rules are intended to implement Iowa Code chapter 303.

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CHAPTER 2
OPERATING AND GRANTING POLICIES

222—2.1(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 and 222—Chapter 1 shall apply to this chapter.

222—2.2(303) Operating policies. The following operating policies shall apply to arts division programs and services except where noted:

2.2(1) Annually, the administrator appoints advisory panels or reviewers to assist in any aspect of arts division administration, programs, or services. The arts division shall accept nominations from the general public of qualified individuals to serve in these capacities.

2.2(2) Recommendations of advisory panels or reviewers on any aspect of administration or programs constitute advice and shall not be binding on the director. In the case of grants, final awarding authority rests with the director or the director's designee.

2.2(3) The arts division shall provide information on arts activities in Iowa to the general public and may charge a fee for the dissemination of such information. Individuals and organizations may request a copy of information collected and maintained by the arts division.

2.2(4) Organizations or individuals requesting information may be charged for time and materials used in producing lists or reports. A list of fees for services is available from the arts division upon request.

222—2.3(303) Funding policies. The following policies apply to all programs outlined in 222—Chapters 3 to 13 except where noted:

2.3(1) All arts division programs shall be conducted according to published guidelines that outline the goals of the programs, eligibility requirements, funding priorities, review criteria, application forms, adjudication processes and recipient requirements.

2.3(2) Grant programs shall require formal application and review prior to the award or denial of any funds. The application, review, and award process will vary with the nature and design of each grant program and will occur according to published guidelines.

2.3(3) A nonprofit organization that has not yet achieved federal tax-exempt status may apply through a fiscal agent.

2.3(4) A tax-exempt, nonprofit organization located in a border city shall be eligible to apply to the arts division for projects that serve Iowa audiences.

2.3(5) An individual applying for and receiving grant funds shall be a legal resident of the United States, or be in the process of becoming a legal resident as evidenced by certified documentation, and be 18 years of age or older unless otherwise noted in program guidelines.

2.3(6) An application from an individual must support a project designed solely to benefit the individual and must not be a project of an organization with which the individual applicant has a formal affiliation such as employment or continued volunteer service.

2.3(7) An application shall not be considered unless submitted on a current arts division application form with support materials as required.

2.3(8) The arts division shall issue a service contract for all funds awarded unless otherwise noted in program guidelines.

2.3(9) No department funds shall be used by a recipient to meet the recipient's obligation to match other arts division or cultural affairs department grants or programs.

2.3(10) Review criteria scores shall be the official record of the proceedings of an advisory panel meeting. Arts division staff shall, upon request, provide an applicant with a written record of these scores.

2.3(11) An advisory panel member who has an affiliation in any grant application and who fails to withdraw from all discussion and voting on such an application shall be recommended for removal from the panel. Affiliated interests shall be interpreted to include an employee, board or trustee relationship with the applicant, and shall be extended to include the spouse and dependent children of the advisory panel member.

2.3(12) The arts division shall not consider an application for funding a previous year's deficit.

2.3(13) A recipient shall not utilize arts division funds for any lobbying purpose.

2.3(14) Unless otherwise contracted for in writing prior to surrender, any and all patents, copyrights, or other legal interest of relevance to programs or projects supported by the arts division shall be the sole and exclusive property of the artist or the artist's designee.

2.3(15) A recipient shall credit the arts council in all promotion, publicity, advertising, and in any printed materials relating to the grant-supported project with the following credit line or a reasonable facsimile: "This program is supported in part by the Iowa Arts Council." Noncompliance with this guideline shall jeopardize future funding of the recipient by the arts division.

2.3(16) An applicant is not eligible to apply for or receive new funds if arts division records show an outstanding late final report or contract-mandated requirement from a previous grant award.

2.3(17) A recipient that does not successfully complete an arts division contract within arts division guidelines may be required to return all or part of the arts division funds; such determination will be made at the sole discretion of the administrator in consultation with arts division staff.

2.3(18) Informal appeals. An informal appeals process shall be made available only to an applicant whose application was declined on procedural impropriety or error as evidenced by one or more of the following reasons:

a. Application declined on the basis of review criteria other than those appearing in the relevant guidelines;

b. Application declined based on influence of a reviewer willfully or unwillingly failing to disclose a conflict of interest; or

c. Application declined based on highly erroneous information provided by staff, reviewers, or council members at the time of review despite the fact that the applicant provided the arts division staff with accurate and complete information on arts division forms as part of the standard application process.

An incomplete or ineligible application is specifically denied any appeals process.

All requests for appeals shall be made in writing and shall be postmarked or received in the arts division office within 30 calendar days of notification of the decision. Requests for appeals should be directed to the Iowa Arts Council Division Administrator at 600 East Locust Street, Des Moines, Iowa 50319-0290. A successful informal appeal shall be determined at the sole discretion of the director, whose discretion may include full or partial funding of the application at the earliest occasion. The director shall have the authority to appoint an appeals committee to assist in the review of any request from an applicant whose application was denied fund-

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ing. The appeals committee shall have representation from the discipline of the aggrieved applicant.

2.3(19) Formal appeals. Decisions by the director may be appealed through the contested case process as set out in Iowa Code sections 17A.10 to 17A.19.

These rules are intended to implement Iowa Code chapter 303.

CHAPTER 3

OPERATIONAL SUPPORT PARTNERSHIP
PROGRAM FOR MAJOR ARTS ORGANIZATIONS

222—3.1(303) Operational support partnership program for major arts organizations. The arts division awards three-year funding support for the general operational expenses of major arts organizations with an exemplary track record of artistic and managerial excellence and community service to the citizens of Iowa.

222—3.2(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 and 222—Chapter 1 shall apply for terms as they are used throughout this chapter. In addition, the following definitions shall apply:

“Funding cycle” means the three-year funding cycle.

“Project year” means July 1 through June 30 and shall coincide with the state of Iowa’s fiscal year.

“Strategic plan” means a document developed and used by an organization to align its organization and budget structure with organizational priorities, mission, goals and objectives.

“Year one” means the first fiscal year of the funding cycle.

“Year-round” means the 12-month period of time in which an organization’s primary arts activities, arts programs or arts services are provided to the citizens of Iowa.

“Year three” means the third fiscal year of the funding cycle.

“Year two” means the second fiscal year of the funding cycle.

222—3.3(303) Eligibility. Applicants must meet all eligibility requirements for two continuous years prior to applying to the operational support partnership program.

3.3(1) An applicant’s primary mission and purpose shall be the arts.

3.3(2) An applicant shall be incorporated in Iowa under the Iowa nonprofit corporation Act and hold federal tax-exempt status, or be a department or division of an Iowa municipal government. An applicant may not use a fiscal agent.

3.3(3) An applicant may be located in a border city.

3.3(4) An applicant shall have an annual cash operating budget of at least \$150,000.

3.3(5) An applicant shall operate year-round and provide arts programs and services year-round to the citizens of Iowa.

3.3(6) At least 50 percent of the individuals benefiting from an applicant’s programs and services must be Iowans.

3.3(7) An applicant shall have at least one paid staff member employed year-round and responsible for managing the organization.

3.3(8) An applicant shall have a strategic plan.

3.3(9) An applicant receiving operational support funding during fiscal year 2004 shall meet the eligibility requirements by fiscal year 2007 or be determined ineligible. Thereafter, an applicant must meet the eligibility requirements of the program. A new applicant shall meet the eligibility requirements at the time an application is submitted.

222—3.4(303) Cash match requirements. An applicant shall be required to demonstrate evidence of ability to match the requested amount in cash. Cash match requirements shall

be met automatically when an applicant’s operating budget contains nonfederal and nondepartmental funds in excess of the award.

222—3.5(303) Funding cycle. The operational support partnership program shall operate on a three-year cycle.

222—3.6(303) Restrictions. An applicant shall be limited to receiving additional grants from the department or any of its divisions in accordance with restrictions that are incorporated into published program guidelines.

222—3.7(303) Application process. An application shall be reviewed using a process that is incorporated into published program guidelines.

222—3.8(303) Review criteria. An application shall be reviewed using review criteria that are incorporated into published program guidelines.

222—3.9(303) Funding awards. Awards shall be made in accordance with the procedures outlined in 222—subrules 2.3(12) to 2.3(17). An award allocated to an applicant in year one of the funding cycle shall be maintained during year two and year three except in the case of a significant shift in the arts division’s annual state or federal appropriation.

222—3.10(303) Notification. Notification of funding awards and other requirements of applicants shall be made in year one of the three-year funding cycle.

222—3.11(303) Contract. A contract shall be issued in year one of the three-year funding cycle.

222—3.12(303) Reporting. A recipient annually shall submit an end-of-year report.

222—3.13(303) Appeals. An applicant denied funding may file an appeal using procedures outlined in 222—subrules 2.3(18) and 2.3(19).

These rules are intended to implement Iowa Code chapter 303.

CHAPTER 4

ARTIST DIRECTORIES AND ROSTERS

222—4.1(303) Artist directories and rosters. The arts division maintains rosters and directories of artists as a service to Iowans.

4.1(1) Teaching artists roster. The teaching artists roster is a juried resource of artists preapproved to work in arts division-sponsored arts in education programs. An artist in the teaching artists roster is selected for individual artistic excellence and ability to work in an educational setting.

4.1(2) Performing artists roster. The performing artists roster is a juried resource of artists preapproved to work in arts division-sponsored performing events. An artist in the performing artists roster is selected for individual artistic excellence, experience in touring, and demonstrated ability to develop marketing and promotional materials for sponsors and to market and promote performances.

4.1(3) Directory of Iowa artists. The directory of Iowa artists is a nonjuried resource designed to help promote the work of Iowa artists, recognize the significant contributions Iowa artists make to the cultural heritage of Iowa, and foster a better understanding of the work produced by Iowa artists.

4.1(4) Folklife directory. The folklife directory is a resource listing of folk and traditional organizations, artists, researchers and general information about folk and traditional arts in Iowa as approved by arts division folklife staff.

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4.1(5) Additional directories and rosters. The arts division may maintain additional directories and rosters in response to the needs and interests of Iowans.

222—4.2(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 and 222—Chapter 1 shall apply for terms as they are used throughout this chapter. In addition, the following definitions shall apply:

“Artist group or company” means an organized group of artists who regularly work together.

“Directory” means a nonjuried list of artists and other resources including contact information and details about their work.

“Individual artist” means an artist who primarily works independently and not regularly with an artist group or company.

“Residency” means an arts division-supported program in which the artist works in a school or community educational setting and instructs participants in a chosen artistic discipline for a period of five days or longer.

“Roster” means a juried list of artists preapproved to work in arts division-sponsored activities.

222—4.3(303) Roster eligibility. Eligibility for each roster is according to guidelines published by the arts division. An Iowa artist applying for inclusion in a roster must be listed in the directory of Iowa artists.

222—4.4(303) Application process. An application for inclusion in a roster or directory shall be made according to published guidelines.

222—4.5(303) Review criteria. Artistic excellence shall be the primary criterion for inclusion in a roster. Additional review criteria shall be according to published guidelines.

222—4.6(303) Artist requirements. An artist approved for any arts division roster or directory shall be required to notify the arts division of any changes in personal information contained in the roster or directory and to verify or update information when requested.

222—4.7(303) Appeals. An applicant denied inclusion in an arts division roster or directory may appeal the decision in accordance with procedures outlined in 222—subrules 2.3(18) and 2.3(19).

These rules are intended to implement Iowa Code chapter 303.

CHAPTER 5 PROJECT GRANT PROGRAMS

222—5.1(303) Project grant programs. The arts division project grant programs provide financial incentives to Iowa artists and individual arts educators; nonprofit and tax-exempt organizations; schools; area education agencies; local, county, state and federal governmental agencies; and tribal councils to support a wide variety of arts-related activities.

222—5.2(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 and 222—Chapter 1 shall apply for terms as they are used throughout this chapter. In addition, the following definition shall apply:

“Imagine Iowa 2010: A Cultural Vision” means the strategic planning document for the department of cultural affairs.

222—5.3(303) Funding priorities. The arts division places a high priority on projects that have high-quality arts production or arts experiences at their center and on projects that advance the goals of Imagine Iowa 2010: A Cultural Vision.

Additional funding priorities for individual grant programs are as listed in the arts division’s published guidelines.

222—5.4(303) Review criteria. Review criteria for all project grant programs include artistic excellence and service to Iowans. Additional review criteria for individual project grant programs are as listed in the arts division’s published guidelines.

222—5.5(303) Funding policies and procedures. Arts division project grant programs shall operate in accordance with funding policies and procedures described in 222—2.3(303).

These rules are intended to implement Iowa Code chapter 303.

CHAPTER 9 IOWA ARTS COUNCIL SCHOLARSHIP FOR THE ARTS

222—9.1(303) Iowa arts council scholarship for the arts. The Iowa arts council scholarship for the arts supports the development of outstanding high school seniors who excel in the arts and are enrolled in accredited educational programs leading to careers in the arts. A limited number of scholarships are awarded annually to selected students for undergraduate tuition and related expenses to attend an Iowa college or university.

222—9.2(303) Definitions. The definitions of terms listed in Iowa Code section 17A.2 and 222—Chapter 1 shall apply for terms as they are used throughout this chapter.

222—9.3(303) Eligibility. An applicant, at the time of application, must be enrolled at the senior class level in an Iowa high school and display proven artistic ability in the area of music, dance, visual arts, theatre, folklife or literature. Prior to issuance of funds, a scholarship recipient must be accepted as a full-time undergraduate student majoring in one or more of the named areas of study at a fully accredited Iowa college or university.

222—9.4(303) Formal application process. A formal application shall be made on an official form published by the arts division. A finalist candidate shall participate in a personal interview with an advisory panel. A finalist candidate is required to attend the personal interview at the candidate’s own expense. A finalist candidate unable to attend the personal interview shall not be considered eligible to receive a scholarship.

222—9.5(303) Deadline. An application shall be due in accordance with the deadline published in the program guidelines.

222—9.6(303) Review criteria. Review criteria shall be in accordance with published program guidelines.

222—9.7(303) Obligation of recipients. Scholarship recipients shall inform the arts division of any change in address or school enrollment.

222—9.8(303) Notification process. An applicant shall be notified of scholarship selections within 30 days of the student interview date.

222—9.9(303) Appeals. An applicant denied scholarship funding may appeal the decision in accordance with procedures as outlined in 222—subrules 2.3(18) and 2.3(19).

These rules are intended to implement Iowa Code chapter 303.

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CHAPTER 12
ARTSAFE PROGRAM

222—12.1(304A) Artsafe. The artsafe program implements Iowa Code sections 304A.21 to 304A.29 authorizing the arts division to provide state of Iowa indemnification to eligible nonprofit Iowa organizations against loss or damage during the exchange, transportation, or exhibition of eligible art and artifacts.

222—12.2(304A) Definitions. The definitions of terms listed in Iowa Code sections 17A.2 and 304A.21 and 222—Chapter 1 shall apply for these terms as they are used throughout this chapter. In addition, the following definitions shall apply:

“Board of regents” means the Iowa board of regents.

“Indemnity agreement” means an agreement authorized by Iowa Code section 304A.22.

222—12.3(304A) Program administration. The artsafe program shall be administered by the arts division in cooperation with the department of administrative services, general services division.

222—12.4(304A) Organizational eligibility. Eligible organizations shall be those as outlined in 222—subrules 2.3(1) to 2.3(5).

222—12.5(304A) Item eligibility. The following items shall be eligible for inclusion in an indemnity agreement by an eligible applicant if they are of educational, cultural, artistic, historic, or scientific significance and constitute a portion of a special exhibition having an estimated total fair market value of at least \$250,000:

12.5(1) Works of art, including tapestries, paintings, sculptures, folk art, graphics, and craft art.

12.5(2) Manuscripts, rare documents, books, and other printed or published material.

12.5(3) Photographs, motion pictures, videotapes, and audiotapes.

12.5(4) Other artifacts.

222—12.6(304A) Eligibility restrictions. Items which are covered under the U.S. Art and Artifacts Indemnity Act shall not be eligible for coverage under the artsafe program.

222—12.7(304A) Coverage limitations.

12.7(1) Coverage of this program shall be limited to the time an object leaves the premises of the lender or place designated in writing by the lender until the time such object is returned to the place designated in writing by the lender.

12.7(2) The state shall provide indemnity coverage for up to 12 consecutive months. The state may indemnify items which travel to several sites, all within the state.

12.7(3) Coverage is extended only to the loss or damage in excess of the first \$2,000 but not exceeding \$5,000,000 in connection with any single exhibition or for any one location.

222—12.8(304A) Application procedures. Applications shall be submitted on official artsafe program forms obtained from the arts division.

222—12.9(304A) Deadlines. The application deadlines shall be the first Monday of February, July and October of each year.

222—12.10(304A) Review criteria. The following review criteria shall be used in reviewing artsafe program applications:

12.10(1) Physical security of exhibition facilities.

12.10(2) Safety of items during transit.

12.10(3) Experience and qualifications of personnel connected with the exhibit.

12.10(4) Eligibility of the applicant’s exhibition facilities for commercial insurance coverage of art objects and artifacts exhibited there.

12.10(5) Availability of proper equipment to protect art objects and artifacts from damage from extremes of temperature or humidity or exposure to glare, sun, dust, or corrosion.

12.10(6) Record of damage to or loss of art or artifacts in the care of participating organizations.

12.10(7) Eligibility of items in the exhibition.

12.10(8) Value of the exhibition and indemnified objects.

12.10(9) Accuracy of the assigned value for items in the application. If the stated value of an object to be indemnified is questioned, the administrator may order an appraisal by an independent appraiser at the expense of the applicant.

222—12.11(304A) Review process. Review procedures as outlined in 222—subrules 2.2(1), 2.2(2) and 2.3(1) to 2.3(10) shall be used for the artsafe program. In addition, the administrator, in consultation with the department of general services, shall consult with an advisory panel in reviewing the qualifications of the applicant, the items, and the value of the items in the exhibit. Panel recommendations shall be reviewed by the council and the department of general services. Final decisions are made by the administrator, after approval of the council and the department of general services.

222—12.12(304A) Indemnity agreement. Recipients of artsafe funds shall sign an indemnity agreement agreeing to all conditions specified in the legislation, program guidelines and administrative rules. The recipients shall notify the arts division by telephone and in writing within 24 hours of any changes in the approved application form.

222—12.13(304A) Notification of claim. Applicants shall use the following procedures when notifying the arts division of a claim:

12.13(1) When the applicant has knowledge of loss of or damage to an indemnified item, the applicant shall notify the arts division within 24 hours. Any delay in notifying the arts division may reduce the recovery under the agreement to the extent that such delay has contributed to the increase of the loss.

12.13(2) The applicant shall report the following information when reporting any loss or damage:

a. Applicant name and address, project director or curator, title of the exhibition and title of object, type and description of loss or damage, date and time when loss or damage occurred, location where loss or damage occurred, and action applicant has taken to prevent further loss or damage;

b. The applicant is required to take all action necessary to protect the indemnified object or objects from further loss or damage after the initial loss or damage has occurred.

222—12.14(304A) Final report. All indemnity recipients shall submit a final report.

222—12.15(304A) Submission of claims. Claims shall be submitted no later than 30 days after the closing date of the agreement. Claims shall be sent to the Director, Division of General Services, Capitol Complex, Des Moines, Iowa 50319. The following procedures shall be used regarding claims:

12.15(1) All claims shall be reviewed by the division of general services. If the division of general services deter-

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mines that the loss is covered by the agreement, the division of general services shall certify the validity of the claim and authorize payment, less any deductible portion, to the lender.

12.15(2) The division of general services may obtain expert advice from outside sources in order to properly review and, if necessary, adjust any claim submitted to the division of general services.

12.15(3) The division of general services shall, in all cases, consult the administrator before making final decisions on the disposition of any claim.

12.15(4) The value of any indemnified object or objects subject to any claim procedures shall not be assessed a greater value than stated in the approved application. If the value of the object or objects in the approved application is higher than the current fair market value, the payment under this indemnification shall be based upon the lower fair market value of the object or objects.

These rules are intended to implement Iowa Code chapter 304A.

CHAPTER 13 ART IN STATE BUILDINGS PROGRAM

222—13.1(304A) Art in state buildings program (AISB). The AISB program implements Iowa Code sections 304A.8 to 304A.14 requiring state agencies and departments to reserve one-half of 1 percent of the total cost of state construction projects for the acquisition of fine arts in state buildings.

222—13.2(304A) Definitions. The definitions of terms listed in Iowa Code sections 17A.2 and 304A.8 to 304A.14 and 222—Chapter 1 shall apply for these terms as they are used throughout this chapter. In addition, the following definitions shall apply:

“AISB” means the art in state buildings program.

“Artist” means an individual applying to the AISB program for consideration of fine artwork for purchase or commission.

“Board of regents” means the Iowa board of regents.

“Program advisory committee” means members of an advisory committee appointed by the administrator.

“Project” means a construction or renovation project.

“Project advisory committee” means the members of an advisory committee appointed by the principal user.

“Site” means an actual building(s) under construction or renovation.

“Slide bank” means a resource of the arts division containing visual and printed materials on artists working in the following disciplines: visual arts, design arts, crafts, folk arts/traditional, photography, interdisciplinary, collaborations, multidisciplinary.

222—13.3(304A) Administration. The AISB program shall be administered by the following:

13.3(1) Arts division. The AISB program is administered by the arts division in consultation with state agencies and departments which review state construction projects governed by Iowa Code sections 304A.8 to 304A.14.

13.3(2) Board of regents. Board of regents projects shall be administered by the board of regents which shall plan and implement projects in consultation with the arts division.

222—13.4(304A) Advisory committees. Advisory committees shall be formed to provide advice and counsel to the arts division and principal users. Advisory committees shall include the following:

13.4(1) AISB program advisory committee. The AISB program advisory committee shall be appointed by the ad-

ministrator to advise the arts division and other state agencies on the overall operation of the AISB program. The committee shall meet at the discretion of the administrator. Committee members shall include representatives of the general services enterprise of the department of administrative services; the departments of human services, natural resources, corrections, and transportation; the board of regents; the Iowa legislature; professional artists; public arts and design arts professionals; and private citizens.

13.4(2) AISB project advisory committee. The administrator, in consultation with the principal user, shall appoint an AISB project advisory committee for each AISB project. The AISB project advisory committee shall be charged with the responsibility of recommending the type of purchase program appropriate for the building and budget, method of selecting the artist or artwork, placement of the artwork in the building, and selection of artwork to purchase or selection of the artist for commission. The AISB project advisory committee shall act only as an advisor with final decisions made by the state agency, in consultation with the arts division.

13.4(3) Board of regents AISB project advisory committees shall be appointed by the board of regents.

222—13.5(304A) Eligibility. The following shall be eligible to participate in the AISB program:

13.5(1) State agencies, departments and the board of regents. The AISB program shall apply only to constructed or substantially renovated state-owned buildings, regardless of the method of finance.

13.5(2) Artists, 18 years of age or older, are eligible to be considered for AISB projects with the following exceptions:

- a. Project architect or planner or employees of the architect's or planner's firm,
- b. Independent contractors or consultants of the architect's or planner's firm,
- c. AISB program or project advisory committee members,
- d. Arts division staff,
- e. Council members,
- f. Others excluded by policies or state law.

222—13.6(304A) Application. The following application procedures shall be used:

13.6(1) State agencies, departments and the board of regents. State agencies and departments and the board of regents shall contact the arts division at the time of engaging an architect or planner to develop plans and specifications.

13.6(2) Artists. Application procedures shall be developed by each project advisory committee and vary with each project.

222—13.7(304A) Artist selection process. Whenever possible, project advisory committees shall use a competitive process to select artists, artwork and designs. Project advisory committees may use, but not be limited to, the following selection processes:

13.7(1) Open competition. An open competition shall be open to all artists meeting eligibility requirements as determined by the AISB project advisory committee. A minimum of two artists shall be considered by the AISB project advisory committee.

13.7(2) Limited competition. A limited competition shall be open to artists invited by the project advisory committee. A minimum of two artists shall be considered by the AISB project advisory committee.

13.7(3) Public art consultant. When deemed in the interests of the state, AISB selection committees may contract

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with a public arts consultant to provide the committee advice and counsel in planning projects and selecting artists and fine arts for state buildings.

222—13.8(304A) Artist review criteria. AISB project advisory committees shall adopt review criteria for each project, in accordance with the arts division's published guidelines.

222—13.9(304A) Reporting. AISB projects shall require the following reports:

13.9(1) Project advisory committees shall write official minutes of all meetings and submit a copy to the arts division.

13.9(2) The principal user shall document each project and each work acquired through the AISB program and provide such documentation to the arts division.

These rules are intended to implement Iowa Code chapter 304A.

ARC 4672B**CREDIT UNION DIVISION[189]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 533.54, the Credit Union Review Board hereby gives Notice of Intended Action to amend Chapter 24, "Electronic Transfer of Funds," Iowa Administrative Code.

Chapter 24 contains rules regarding the operation or control of a satellite terminal and pertaining to a financial transaction engaged in through a satellite terminal. These amendments pertain to approval of satellite terminals and to customer instruction in the use of terminals.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 13, 2005. Such written material should be directed to James Forney, Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309; fax (515)281-7595; E-mail James.Forney@iacudiv.state.ia.us.

There will be a public hearing on the proposed amendments at 10 a.m. on December 13, 2005, in the Credit Union Division Conference Room, 200 East Grand, Suite 370, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Credit Union Division prior to the hearing if accommodations need to be made.

These amendments are intended to implement Iowa Code chapter 527.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 24.5(1) to read as follows:

24.5(1) Approval required. A satellite terminal shall not be established or operated in the state of Iowa unless written approval for that establishment and operation has been obtained from the administrator. *Exceptions to this requirement may exist based upon judicial rulings on applicability of Iowa Code subsections 527.5(3) and 527.5(7) to certain federally chartered financial institutions.*

ITEM 2. Amend rule 189—24.6(527) to read as follows:

189—24.6(527) Advertising at satellite terminals *Customer instruction in the use of a satellite terminal.*

24.6(1) ~~Scope.~~ A satellite terminal as defined by Iowa Code section 527.2 includes terminals located on the premises of a financial institution, as well as all terminals located off the premises of a financial institution. For purposes of advertising, however, only satellite terminals located off the premises of the establishing financial institution are governed by the restrictions contained in these rules.

24.6(2) ~~Advertising at satellite terminal locations.~~ The term "satellite terminal location," as used in Iowa Code subsection 527.5(5), means all physical space within 100 feet in any direction of the satellite terminal. Advertising identifying the establishing financial institution may be displayed at any location outside this area as defined; however, any physical structure which encompasses a satellite terminal location, except a branch facility of the establishing financial institution, is also prohibited from displaying advertising identifying the establishing financial institution.

24.6(3) ~~Other forms of advertising.~~ The establishing financial institution is permitted to advertise its establishment of off-premises satellite terminals in newspaper, radio, television, or other media, as long as such advertising does not appear or is not broadcast at the satellite terminal location or anywhere in or upon the physical structure encompassing the satellite terminal.

24.6(4) ~~Satellite terminal use instructions.~~ Iowa Code subsection 527.5(4) prohibits employees of the establishing financial institution or affiliate from attending or operating a satellite terminal except on a temporary basis for the purpose of instructing customers in the proper use of the satellite terminal. For purposes of these rules *this rule*, such temporary basis shall be defined to be no more than 30 calendar days from the date of initial operation of the satellite terminal. Satellite terminals located on the premises of the establishing financial institution are exempt from this restriction.

This rule is intended to implement Iowa Code subsections *subsection 527.5(4) and 527.5(5).*

ARC 4659B**ELDER AFFAIRS
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 1, "Introduction," and adopt a new

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Chapter 1, "Introduction, Abbreviations and Definitions," Iowa Administrative Code.

The new chapter contains definitions for words and phrases that are used in more than one chapter under agency number 321. Definitions that are specific to only one chapter have been moved to that chapter. Abbreviations that are common to more than one chapter under agency number 321 are given in this chapter. The order of precedence for federal and state regulations is given.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 1 and adopt the following **new** chapter:

CHAPTER 1
INTRODUCTION, ABBREVIATIONS
AND DEFINITIONS

321—1.1(231) Authority and purpose. The rules of the Iowa department of elder affairs are based on the authority of Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H. These rules prescribe requirements:

1. That agencies shall meet to receive grants under the Older Americans Act and other funds administered through the Iowa department of elder affairs;
2. For certification and operation of elder group homes, assisted living programs, and adult day services;
3. For planning, administration and service delivery for the department as well as the area agencies on aging;
4. Of the department's fiscal policy;
5. To request waivers or variances from administrative rules;
6. For monitoring, complaint investigation and penalties for programs under the department's jurisdiction; and
7. For operation, administration and planning of the long-term care resident's advocate/ombudsman office and other entities under the department's purview which assist in ensuring quality care and protection of Iowa's elders.

321—1.2(231) Other regulations and order of precedence. These agency rules are based on the following federal and state regulations that are listed in the order of precedence which shall prevail in the event of conflicting or inconsistent requirements:

1. Older Americans Act of 1965, as amended.
2. Code of Federal Regulations, 5 CFR 900, Subpart F, August 14, 1979; 7 CFR 250, January 9, 1985; 28 CFR 89, March 2, 1976; 45 CFR Parts: 74, June 7, 1981; 80, December 4, 1964; 81, November 7, 1971; 84, May 4, 1977; 90, June 12, 1979; and 1321, April 1, 1985.
3. Federal Administration on Aging policy issuances and administration on aging program instructions.

4. Iowa Code chapter 231 and other Iowa Code chapters as given in 321 IAC 1.1(231) and other chapters as determined by the Iowa legislature.

5. Administrative rules published in the Iowa Administrative Code, promulgated under agency number 321.

6. Iowa aging program instructions issued by the department and signed by the director or the director's designee.

321—1.3(231) Applicability. The rules set forth in the chapters under the jurisdiction of the department of elder affairs apply to all grants awarded to any recipient through the department and to any entities regulated by the department. Compliance with these rules shall be mandatory, unless a waiver is granted in accordance with the procedure in 321 IAC 11.

321—1.4(231) Abbreviations. Abbreviations used in rules under agency number 321 are as given below unless defined and used differently in various chapters under the department's jurisdiction:

"AAA" means Area Agency on Aging, singular or plural dependent on context.

"AOA" means the Administration on Aging, the federal agency established to administer the provisions of the Act.

"CFR" means the Code of Federal Regulations.

"CMPFE" means the case management program for the frail elderly as provided in Iowa Code section 231.23A.

"DEA" means the department of elder affairs established in Iowa Code chapter 231.

"DIA" means the department of inspections and appeals established in Iowa Code chapter 10A.

"IADL" means instrumental activities of daily living.

"IAPI" means the Iowa aging program instruction, the documents issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA.

"NAPIS" means the National Aging Program Information System, the data collection and assimilating process used for preparation of the annual uniform state performance report under the OAA.

"OAA" means the Older Americans Act.

"RDA/AI" means recommended daily allowances/adequate intakes for purposes of nutrition standards.

"SLCU" means the senior living coordinating unit as established in Iowa Code section 231.58.

321—1.5(231) Definitions. Words and phrases used in rules under agency number 321 are defined as below unless defined and used differently in the various chapters under the department's jurisdiction. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

"Accessible" means without physical, cultural, financial, or psychological barriers to service.

"Act" or "federal Act" or "OAA" means the Older Americans Act, 42 U.S.C. § 3001 et seq.

"Administration on Aging" or "AOA" means the federal agency established to administer the provisions of the Act.

"Administrative action" means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents of long-term care facilities.

"Aggrieved party" means an individual or organization that alleges that the individual's or organization's rights have been denied by action of the department, AAA or AAA sub-contractor.

"Area agency on aging," "area agency" or "AAA" means the grantee agency(ies) designated by the commission in a

ELDER AFFAIRS DEPARTMENT[321](cont'd)

planning and service area to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231 and rules promulgated by the department of elder affairs. These terms may be interpreted as either singular or plural form as determined by context.

“Area plan” or “multiyear area plan” means a document, developed in accordance with the uniform area plan format and IAPI issued by the department, that is submitted to the department every four years, with annual updates, by an AAA in order to receive subgrants from the department’s grants.

“Cognitive disorder” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“Commission” means the commission of elder affairs.

“Complaint” means a report of an alleged violation of requirements of federal and state laws, rules or regulations, or a report of practices and procedures related to admission or to an individual’s entitlement to care and services under federal and state laws and regulations.

“Comprehensive and coordinated system” means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. Facilitate accessibility to and utilization of all supportive and nutrition services provided within the geographic area served by the system by any public or private agency or organization.

2. Develop and make the most efficient use of supportive services and nutrition services to meet the needs of elders with a minimum of duplication.

3. Use available resources efficiently and with a minimum of duplication; and

4. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the elders on a voluntary basis.

“Continuum of care” means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore elders to their optimal environment.

“Contract” means an agreement between two or more persons which creates an obligation to do or not to do a permissible or an impermissible action. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Dementia-specific” means a program certified under the law and regulations governing the particular program which either serves five or more persons with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer’s disease, in a dedicated setting.

“Department of elder affairs” or “department” means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapters 231, 231B, 231C, and 231D and other applicable laws or rules.

“Dietitian” or “licensed dietitian” means a person who maintains a license granted by the Iowa board of dietetic examiners.

“Director” means the director of the Iowa department of elder affairs.

“Disability” (OAA) means (except when such term is used in the phrase “severe disability,” “developmental disabilities,” “physical and mental disability,” “physical and mental disabilities,” or “physical disabilities”) a disability attributable to mental or physical impairment, or a combination of mental or physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, (7) economic self-sufficiency, (8) cognitive functioning, and (9) emotional adjustment.

“Elder” means a person aged 60 or older.

“Elder abuse” (OAA) means abuse, neglect, or exploitation of an older individual (elder) including the willful:

1. Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or

2. Deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“Eligible individual” means any person who meets the federal definition of this term for the program being utilized.

“Fiscal year” or “FY” means the state fiscal year, July 1 through June 30, numbered according to the year in which the fiscal year ends.

“Focal point” means a facility established to encourage the maximum collocation and coordination of services for older individuals.

“Frail” (AOA Title III-D) means having a physical or mental disability, including Alzheimer’s disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of an individual to live independently.

“Grantee” means the legal entity to which a grant is awarded and which is accountable to the department for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. The term “grantee” does not include any secondary recipients such as subgrantees or subcontractors that may receive funds from a grantee pursuant to a grant.

“Greatest economic need” means the need resulting from an annual income level at or below the official poverty guideline as defined in IAPI issued by the department.

“Greatest social need” means the need caused by noneconomic factors, which include physical and mental disabilities, language barriers, and cultural, geographic or social isolation including isolation caused by racial or ethnic status, that restrict an individual’s ability to perform normal daily tasks or that threaten the elder’s capacity to live independently.

“Grievance” means a report of an administrative action alleged to affect tenants or participants in an adverse manner.

“In-home services” means:

1. Services of homemakers and home health aides;
2. Visiting and telephone reassurance;
3. Chore maintenance;
4. In-home respite care for families, and adult day care as a respite service for families;

5. Minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than another program carried out under the Act);

6. Personal care services; and

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7. Other in-home services as defined by the DEA in the state plan submitted in accordance with Section 307 of the Act and by the AAA in the area plan submitted in accordance with Section 306 of the Act.

“Instrumental activities of daily living” or “IADL” means those activities that reflect the elder’s ability to perform household and other tasks necessary to meet the elder’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“Iowa Aging Program Instruction” or “IAPI” means a document issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA or instructions which change frequently.

“Legal assistance” means provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

“Legal representative” means a person appointed by the court to act on behalf of a participant or tenant, or a person acting pursuant to a power of attorney.

“Long-term care facility” means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“Long-term care resident’s advocate program” or “LTCRAP” means the statewide long-term care ombudsman program operated by the department of elder affairs pursuant to the federal Act and Iowa Code chapter 231.

“National Aging Program Information System” or “NAPIS” means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

“Neglect” (OAA) means the failure:

1. To provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or

2. Of a caregiver to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“Nurse-delegated assistance” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Older Americans Act” or “OAA” means the same as “Act” defined herein.

“Person” means the same as that defined in Iowa Code section 4.1(20).

“Planning and service area” or “PSA” means a geographic area of the state that is designated by the commission for purposes of planning, development, delivery and overall administration of services under a multiyear area plan. “PSA” may be interpreted as either singular or plural dependent on context.

“Provider” means any person, company, firm, association or other legal entity that provides services as delineated in any chapter under agency number 321.

“Public or private nonprofit service provider” means any government agency or private organization certified to be nonprofit by the U.S. Internal Revenue Service or an agency which was established pursuant to Iowa Code chapter 28E or chapter 504A and is composed solely of public agencies or governmental units as defined in those chapters.

“Resident” means any person residing in a long-term care facility and shall also include individuals seeking admission to a long-term care facility.

“Routine” means regular, customary or not occasional or intermittent.

“Rural” or “rural area” means any area that is not defined as urban. Urban areas comprise:

1. Urbanized areas (a central place and its adjacent densely settled territories with a combined minimum population of 50,000); and

2. An incorporated place or a census-designated place with 20,000 or more inhabitants.

“Senior living coordinating unit” or “SLCU” means the senior living coordinating unit established in Iowa Code section 231.58.

“Therapeutic diet” means meals served that are soft, low-fat, low-sodium or controlled calorie.

“Title III” means Title III of the federal Act for state and community programs on aging.

1. “Title III-B” means requirements and funding for supportive services.

2. “Title III-C” means requirements and funding for nutrition services.

3. “Title III-C(1)” means requirements and funding for congregate nutrition services.

4. “Title III-C(2)” means requirements and funding for home-delivered nutrition services.

5. “Title III-D” means requirements and funding for disease prevention and health promotion.

6. “Title III-E” means requirements and funding for the National Family Caregiver Support program.

“Title V” means Title V of the federal Act for the Senior Community Service Employment Program for Older Americans.

“Title VII” means Title VII of the federal Act for allotments for vulnerable elder rights protection activities.

These rules are intended to implement Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H.

ARC 4660B**ELDER AFFAIRS
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 2, “Department of Elder Affairs Established,” and adopt a new Chapter 2, “Department of Elder Affairs,” Iowa Administrative Code.

The new chapter rewrites the current chapter to eliminate obsolete information, such as references to sections of the Iowa Code or rules which have changed or been eliminated. Language which repeated the Code of Iowa has been removed. A mission statement and definitions have been added. The names and responsibilities of the various divisions and offices of the Department have been brought into line with current operating procedures and legal requirements for the Department. The Department complaint procedure has been removed from this chapter and placed in other chapters that give the procedure appropriate to that chapter.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on Jan-

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uary 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 2 and adopt the following **new** chapter:

CHAPTER 2
DEPARTMENT OF ELDER AFFAIRS

321—2.1(231) Mission statement. The mission of the department of elder affairs is to provide advocacy, information, educational and prevention services to elders so they may find Iowa a healthy, safe, productive and enjoyable place to live and work.

321—2.2(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise.

321—2.3(231) Department established.

2.3(1) Authority. The Iowa department of elder affairs is established by Iowa Code chapter 231 and is the sole state agency responsible for administration of the federal Act.

2.3(2) Contact information. General correspondence, inquiries, requests for information or assistance, complaints, or petitions may be sent to or obtained from the following sources:

a. By mail addressed to: Director, Iowa Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319;

b. By telephone at (515)242-3333; or

c. From the Web site at <http://www.ia.state.us/elderaffairs>.

2.3(3) Business hours. Business hours for the department are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays established by the state executive council.

321—2.4(231) Director. The director's duties and responsibilities are established in Iowa Code chapter 231.

321—2.5(231) Organizational units of the department. The department's activities are performed by employees within the office of the director, two divisions and the office of elder rights. Grants will be managed by the appropriate division, office of the director or office of elder rights, dependent upon the source and intended use of funds.

2.5(1) The office of the director is comprised of the director, administrative support, public information officer, division administrators and legislative liaison. This office is responsible for the overall planning, policy, management and operations of the department.

2.5(2) The administrative division is responsible for the following:

a. Coordinating, reviewing and processing the multiyear area plans from the area agencies on aging;

b. Developing and processing the State Plan Funding Application to the federal government;

c. Monitoring, assessing, evaluating and auditing the 13 area agencies on aging for general area plan performance;

d. Maintaining accountability for all state, federal and local funds for which the department is responsible;

e. Managing a variety of department administrative responsibilities (including but not limited to budget preparation, personnel activities, ordering supplies and purchasing equipment);

f. Developing and maintaining computerized information systems which compile and analyze data to assess the quality and priorities of the department's programs; and

g. Processing information for presentation in reports, pamphlets, brochures, videotapes and the news media.

2.5(3) The elder programs and advocacy division is responsible for the following:

a. Developing program initiatives related to the department's mission;

b. Reviewing and commenting upon laws, regulations, and rules that impact programs and services for elders;

c. Program development related to:

(1) The continua of long-term care options;

(2) Case management program for the frail elderly;

(3) Nutrition and health promotion;

(4) Information and assistance;

(5) Adult day and respite services;

(6) Housing, including elder group homes and assisted living;

(7) Access to public benefits;

(8) Mature worker programs, including pension counseling; and

(9) Caregiver programs;

d. Providing customer services related to elders' rights issues;

e. Monitoring and assessing services related to elder programs and advocacy issues;

f. Outreach to elders in greatest need (minority, rural, low-income and persons with disabilities);

g. Coordination and advocacy efforts which involve partnerships with a variety of public and private agencies; and

h. Providing educational opportunities such as conferences, workshops and other means of informing elders and their caregivers.

2.5(4) Office of elder rights. The office of elder rights includes:

a. The office of the long-term care ombudsman which is responsible for all applicable duties contained within the federal Act and the duties as outlined in 321 IAC 8;

b. Legal assistance development related to the department's mission and duties as outlined in 321 IAC 7;

c. Elder abuse policy development, prevention, education and intervention and duties as outlined in 321 IAC 15; and

d. Providing customer services related to elders' rights issues.

321—2.6(231) Staffing.

2.6(1) Procedure for employment with the state of Iowa is given in 11 IAC 54, Recruitment, Application and Examination. Applicants for employment who are not chosen for a position shall be notified in writing.

2.6(2) The department may, as provided in 11 IAC 51.4(8A), obtain specialized services of individuals or organizations on a contract basis.

2.6(3) Standards of conduct. Each employee of the department is personally responsible for maintaining a high standard of conduct, consistent with 11 IAC 66, Conduct of

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Classified Employees, and with standards issued by the director.

321—2.7(231) Discrimination. The department shall comply with 11 IAC 68, Equal Employment Opportunity and Affirmative Action, and associated provisions of federal and state law in all personnel actions. Any person who believes that the person has been discriminated against shall follow the appropriate procedures given in:

1. 11 IAC 61, Grievances and Appeals;
2. Any applicable collective bargaining agreement;
3. 11 IAC 68, Equal Employment Opportunity and Affirmative Action.
4. Any applicable provisions of federal statute, Iowa law or rule.

321—2.8(231) Affirmative action plans. The director shall comply with 11 IAC 68 and with the requirements of Section 900.607 of Title 5 of the Code of Federal Regulations (1981).

These rules are intended to implement Iowa Code chapter 231.

ARC 4661B**ELDER AFFAIRS
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 4, "Department Planning Responsibilities," Iowa Administrative Code, and adopt a new Chapter 4 with the same title.

This chapter has been completely reorganized and rephrased from the current chapter to clarify and consolidate the Department planning process into sequential order. The portions of the chapter relating to planning by the Area Agencies on Aging have been removed and placed in 321—Chapter 6.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 4 and adopt the following **new** chapter:

CHAPTER 4**DEPARTMENT PLANNING RESPONSIBILITIES**

321—4.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definition also applies to this chapter:

"Unit of general purpose local government" means a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions.

321—4.2(231) State plan on aging.

4.2(1) Authority. The Iowa department of elder affairs is designated as the sole state unit on aging in Iowa for the development and implementation of a state plan on aging under Section 305 (42 U.S.C. 3025) of the Act.

4.2(2) Duration and format. The department shall develop a four-year state plan in compliance with the OAA and Iowa Code chapter 231, in order to receive grants under the Act. The state plan shall be developed in accordance with the format, content, time limits, transmittal forms, and procedures specified by the federal AOA. The state plan on aging shall also be in compliance with requirements for state plans under the Act, Section 307 and associated instructions, guidance or direction from the federal AOA.

4.2(3) Process.

a. The department shall hold at least one public hearing on the state plan.

b. The commission shall consider and approve the state plan or state plan amendment prior to submittal to the governor for approval and signature.

c. Each state plan or state plan amendment shall be signed by the governor and submitted to AOA to be considered for approval at least 45 calendar days before the effective date of the plan or the plan amendment.

321—4.3(231) Designation of PSA. Unless changed for reasons given in this chapter, the PSA boundaries shall remain the same as those existing on July 1, 1985.

4.3(1) Criteria. The PSA boundaries shall remain the same as those which existed on July 1, 1985, unless altered for cause under the provisions of this chapter. The commission may alter existing PSA boundaries only after giving consideration to and meeting all requirements under Section 305 (42 U.S.C. 3025) of the Act.

4.3(2) PSA boundary alteration procedure. Prior to submission of the multiyear state plan on aging, the commission shall notify the AOA of the intent to either maintain or alter existing PSA boundaries. If the intent is to alter PSA boundaries, the department shall utilize the following process:

a. Notice. The department shall advertise the intent to alter existing boundaries and the availability of applications to serve as a PSA in the affected area by sending notice to all AAA, units of local government, and known groups of elders in the affected PSA.

b. Publication. The department shall also publish a notice in at least one newspaper of statewide circulation and the official newspapers as designated for each county served by the affected PSA.

c. Time frame. The notice shall be published a minimum of 50 days in advance of the deadline for submitting applications.

d. Deadline. The notice shall state the precise deadline for requesting application packets as well as for submittal of completed applications.

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4.3(3) Application requests. Interested applicants shall send a letter of intent to apply and a request for an application packet to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. The letter and request must be received by the department prior to the deadline for requests as established in the notice provided pursuant to paragraph 4.3(2)“d.”

4.3(4) Application content. The application shall contain information that indicates the applicant’s ability to:

- a. Meet the criteria established in the Act;
- b. Conform to state law and rules promulgated by agencies having jurisdiction in the affected PSA.

4.3(5) Public hearing.

a. Within 60 days after notification of AOA as required in this rule, the department shall hold a minimum of one public hearing which shall be chaired by the director or the director’s designee for the purpose of receiving presentations by the applicants and comments from the public.

b. The department shall designate a date, time and place for the hearing and shall publish notice at least two weeks in advance. If possible, the ICN network will be used to minimize travel for those wishing to participate, except applicants. Applicant presentations are to be given at the designated public hearing site in Des Moines.

c. The department may receive oral and written comments from interested persons prior to the hearing. These comments shall have the same weight and effect as those received at the hearing.

d. Presentations and comments at the hearing shall be time-limited and shall be prearranged with the department.

4.3(6) Department review of applications and comments.

a. The department shall review all applications and comments to determine the applicant most qualified to fulfill the PSA obligations for the affected area.

b. A synopsis of application and comment information shall be prepared for the commission. If requested, the commission may fully review all applications and comments.

c. Within 90 days after the public hearing, the department shall issue a proposed decision. The proposed decision shall be based on analysis of application content, public comments and criteria contained in Section 305 (42 U.S.C. 3025) of the Act.

4.3(7) Commission action. The commission shall act on the boundary alteration proposal or designation of a PSA at its next meeting after receipt of the department’s proposed decision. As a part of the commission’s action, the commission shall include an effective date which shall be at least 365 days after the final decision.

321—4.4(231) Designation of AAA. Unless changed for reasons given in this chapter, the AAA designations shall remain the same as those existing on July 1, 1985.

4.4(1) If, for any reason, there is need to change the AAA designation, the commission shall follow the procedures given in this chapter to designate an entity to be the AAA to serve each PSA as defined in this chapter.

4.4(2) The commission shall alter existing AAA designations only for the following reasons:

- a. Withdrawal by the department of an existing AAA designation as outlined in this chapter;
- b. Voluntary withdrawal by the existing AAA of its designation; or
- c. A change in the designation of the PSA served by the AAA.

321—4.5(231) Types of entities that qualify as an AAA.

4.5(1) Qualifications. In order to qualify for designation as an AAA, an entity must have the authority and capacity to perform the functions of an AAA and handle the responsibilities outlined in 321 IAC 5, 6 and 7.

4.5(2) Right of first refusal. When the commission designates a new AAA, the commission shall give the right of first refusal to a unit of general purpose local government provided:

- a. The unit can meet the requirements of this rule;
- b. The unit’s boundaries and the boundaries of the PSA are reasonably contiguous.

4.5(3) First refusal process. Should a unit of general purpose local government choose to exercise the right of first refusal, it shall make application for designation as an AAA as provided in this chapter.

4.5(4) Order of preference. When a unit of general purpose local government does not exercise the right of first refusal by making application, applicant preference categories shall be in the following order:

1. An established office on aging which is defined as a legally incorporated entity with employed staff whose single purpose is to administer programs for elders.
2. An agency whose single purpose is to administer programs for elders.
3. A multipurpose agency as defined in 321 IAC 4.6(231).
4. Any public or nonprofit private agency in a PSA which can engage in the planning and provision of a broad range of supportive or nutrition services within the PSA, except any regional or local agency of the state.

321—4.6(231) Multipurpose entity. An AAA may be a multipurpose entity with the authority and capacity to administer human services in the PSA.

4.6(1) A multipurpose entity shall delegate all its authority and responsibility under the Act to a single organizational unit within the entity unless it applies for and receives a waiver of this requirement from the department as a part of the application approval process.

4.6(2) A multipurpose entity previously designated as an AAA shall submit its waiver request as a part of its multiyear area plan.

4.6(3) When a multipurpose entity is designated as the AAA for a designated PSA, the governing body of that multipurpose entity shall be responsible to the department for the administration and operation of the aging programs under the multiyear area plan.

321—4.7(231) Request for waiver. A waiver request seeks waiver of the requirement to delegate all authority and responsibilities under the Act to a single organizational unit.

4.7(1) An area agency shall submit a request on forms supplied by the department, and shall:

- a. Describe methods for carrying out the AAA’s functions and responsibilities under the Act; and
- b. Designate a component unit of the AAA to:
 - (1) Plan and develop policies and programs for elders in the multiyear area plan;
 - (2) Administer the area plan; and
 - (3) Provide a visible focal point for advocacy and coordination for the PSA.

4.7(2) The commission may approve a request for waiver if it is determined that the AAA can effectively carry out its functions and responsibilities under the Act without being a single organizational unit.

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321—4.8(231) Applicant qualification and preference.

The method for determining qualified applicants for AAA designation and for giving preference if there is more than one qualified applicant in any of the eligible applicant categories shall be in accordance with this chapter.

321—4.9(231) Procedure for designation of an AAA.

4.9(1) Notice. The department shall advertise the need for applications from qualified entities by sending notice to all units of local government, known groups of elders, and potential service providers in the affected PSA. In addition, the department shall publish a notice in the official newspapers as designated for each county served by the AAA a minimum of 45 days in advance of the deadline for submitting applications. The notice shall state the precise deadline for requesting application packets as well as for submittal of completed applications.

4.9(2) Requests. Interested applicants shall send a letter of intent to apply and a request for an application packet to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. This material must be received by the department prior to the deadline for requests as established in the notice provided pursuant to 4.9(1).

4.9(3) Application content. The application shall contain, at a minimum, the following information for the entity:

- a. Indications of organizational stability;
- b. Administrative ability and staffing proposals;
- c. Organizational structure;
- d. Services offered;
- e. Fiscal history and management capabilities;
- f. Proposed methods for development of an advisory council whose members are representative of the PSA and the population served;
- g. Ability to meet the requirements of this chapter and others governing administration, operation and reporting requirements for AAA;
- h. An applicant that is a multipurpose agency must include in its application a proposal for the delegation of all its authority and responsibility to a single organizational unit within its structure. An applicant that does not propose delegation must submit a waiver request as required by this chapter.

4.9(4) Public hearing.

a. The department shall hold a minimum of one public hearing which shall be chaired by the director or the director's designee for the purpose of providing presentations by applicants and receiving comments from the public.

b. The department shall designate a date, time and place for the hearing and publish notice at least two weeks in advance. If possible, the ICN network will be used to minimize travel for those wishing to participate.

c. The department may receive oral and written comments from interested persons prior to the hearing. These comments shall have the same weight and effect as those received at the hearing.

d. Presentations and comments at the hearing shall be time-limited and shall be prearranged with the department.

4.9(5) Department review of applications and comments. Subsequent to the public hearing, the applications shall be sorted according to types of agencies and in the order of preference categories as given in 4.9(7). The department shall review all applications and comments based on the criteria established by this chapter to determine the applicants qualified for an on-site assessment. A synopsis of this information shall be prepared for the commission.

4.9(6) On-site assessment. The purpose of the assessment is to verify information provided in the application.

a. The department shall make arrangements for the assessment with the qualified applicant(s).

b. A written tool shall be used to conduct the assessment.

c. The department shall present to the commission a written report of the assessment and a written recommendation regarding the designation of an AAA.

d. The basis for the recommendation shall be the application review, the public comments, and the on-site assessment.

4.9(7) Preference process. Preference categories may be found in subrule 4.5(4).

a. The department shall determine whether any applicants in the first preference category are qualified.

b. If there is more than one qualified applicant in this category, the more qualified applicant will be determined by review, comparison and analysis of how well each applicant meets the criteria set forth in this chapter.

c. When the more qualified applicant has been determined, the designation may be offered to that applicant.

d. If for any reason that applicant is unable to accept the designation, the department may offer the designation to the second more qualified applicant in the first category, or the more qualified applicant in the second preference category shall be determined. A review, comparison and analysis shall be made between the applicant selected in the second preference category and the second place applicant under the first category.

e. The designation may be offered to the more qualified of the two. If for any reason that applicant is unable to accept the designation, the same process shall continue through the preference categories as given in this rule.

4.9(8) Commission action. When designating an AAA, the commission shall consider the following:

- a. The synopsis of the application review as performed by the department;
- b. The findings of the on-site assessment; and
- c. Recommendations of the department.

4.9(9) The commission shall act on the designation of an AAA at its next meeting after receiving the department's recommendation.

321—4.10(231) Withdrawal of AAA designation. When an AAA cannot, or will not, fulfill its responsibilities as given in 321 IAC 5, the commission may withdraw the designation for reasons including but not limited to:

1. Substantial violation of grant terms and conditions or requirements and standards set forth in state law or rules promulgated by the department or other agencies having jurisdiction;

2. Inadequate performance of the responsibilities outlined in 321 IAC 5, 6, or 7 and any other chapters governing administration, operation and reporting for AAA;

3. The AAA's multiyear area plan is not approved by the commission;

4. Actual performance varies drastically from planned performance;

5. Financial instability;

6. Deficiency in implementation of programs;

7. Contractual or direct services to the elderly commenced more than two months after the approved project period;

8. Reporting of fiscal or performance data does not comply with written procedures issued by the department; or

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9. The AAA has been unable or has refused to take timely remedial action to correct cited deficiencies within the given time frame established for correction.

321—4.11(231) Procedures for withdrawal of AAA designation.

4.11(1) When there is reason to withdraw AAA designation as outlined in this chapter, the department shall:

- a. Notify the AAA in writing of the deficiency or deficiencies that form the reason for the withdrawal;
- b. Provide technical assistance to determine the staffing, management, fiscal or other problems causing the reason for withdrawal;
- c. Assist in developing a written action plan for correcting the reason within a given time frame;
- d. Monitor the progress toward correcting the deficiency;
- e. Report to the AAA in writing the findings of the monitoring; and
- f. Determine appropriate commission action based on the progress as determined in monitoring progress reports, which may include:
 - (1) Placing the AAA in probationary status;
 - (2) Retrieval or withholding of funds;
 - (3) Suspension or withdrawal of AAA designation.

4.11(2) The department shall give written notice to the AAA of the right to appeal.

a. Any applicant for designation as an AAA whose application is denied and who has been provided a hearing by the department of inspections and appeals and has received a written appeal decision by the commission may appeal the denial to the federal commissioner of the AOA in writing within 30 calendar days of receipt of the commission's decision.

b. A party who seeks judicial review shall first exhaust all administrative remedies as follows:

(1) A party may appeal the decision of the administrative law judge as provided in this subrule and receive a decision from the commission as provided in this subrule.

(2) Petition for judicial review of the commission's decision shall be filed within 30 calendar days after the decision is issued.

321—4.12(231) Department action subsequent to withdrawal.

4.12(1) Notification and plan. When AAA designation has been withdrawn, the department shall:

- a. Notify the AOA in writing of the designation withdrawal.
- b. Implement a plan for continuity of services in the affected PSA.
- c. Designate a new AAA in the PSA in accordance with this chapter.

4.12(2) Continuity of services. To ensure continuity of services in the affected PSA, the department may:

- a. Perform the responsibilities of the AAA;
- b. Assign the responsibilities of the AAA to another agency in the PSA; or
- c. If necessary, request in writing an extension of the designation for up to 180 days from the AOA. The request must document the need for an extension to provide continuity of services in the affected PSA.

321—4.13(231) Technical assistance. The department may provide assistance as follows:

1. To an AAA that is unable to meet target dates, that has requested training, or in order to determine remedial action for performance deficiencies.

2. To any organization, agency, association or individual representing or serving the needs of elders.

These rules are intended to implement Iowa Code chapter 231.

ARC 4662B**ELDER AFFAIRS
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 5, “Department Fiscal Policy,” Iowa Administrative Code, and adopt a new Chapter 5 with the same title.

New Chapter 5 has been completely reorganized and rephrased from the current Chapter 5 to clarify and consolidate the Department fiscal process and policy into rules governing the funding sources and their uses. Obsolete references to Older Americans Act titles have been removed and the rule has been updated to reflect current practices. Duplicative language has been removed and portions of the chapter have been removed and placed in a chapter more appropriate to their subject matter.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 5 and adopt the following **new** chapter:

**CHAPTER 5
DEPARTMENT FISCAL POLICY**

321—5.1(231) Definitions. Words and phrases as used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“Costs of administration” means all direct and indirect costs incurred by the grantee in managing a grant, including all audit and policy board expenses incurred in the support of an AAA director.

“Fund balance policy” or “FBP” means the instructions established in Iowa aging program instructions (IAPI) issued

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by the department of elder affairs covering the calculation of reallocations in specific allocations.

“Local match” means the equivalent cash value of third-party in-kind contributions and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a grant-supported project or program not borne by the department.

“NSIP” means the Nutrition Services Incentive Program established under the OAA.

“Poverty” means those persons whose income is below the official poverty guideline (as defined each year by the Office of Management and Budget, and adjusted by the Secretary of DHHS) in accordance with Subsection 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). The annual DHHS poverty guidelines provide dollar thresholds representing poverty levels for households of various sizes.

“Program income” or “project income” or “contributions” means grant-related income or gross income earned by a grantee or its subcontractors from activities, part or all of the cost of which is borne as a direct cost by a grant, or income counted as a direct cost toward meeting a cost-sharing or matching requirement of a grant; such as fees or participant contributions for services performed during the grant or subgrant period, proceeds from the sale of tangible property, usage or rental fees, and patent or copyright royalties.

“Third-party in-kind contributions” means property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

“Title,” followed by a roman numeral, with or without an alphabetic reference (e.g., Title III or Title III-C), means requirements or funding covered by the OAA.

321—5.2(231) Grants to area agencies on aging.

5.2(1) General. The department shall make annual allotments to each AAA to support a portion of the costs of administration and services under the multiyear area plan.

5.2(2) Types of OAA allotments. Each AAA receives designated and distinct allotments for:

- a. Supportive services – Title III-B;
- b. Congregate nutrition services – Title III-C(1);
- c. Home-delivered nutrition services – Title III-C(2);
- d. Preventative health services – Title III-D;
- e. National Family Caregiver Support program – Title III-E;
- f. Other federal and state appropriations received by the department.

5.2(3) Transfers between supportive and nutrition services funds are allowable under the OAA and are specifically addressed in area plan instructions, the reporting manual or IAPI.

321—5.3(231) Limitations on use. Except as provided in this rule, the AAA shall use each allotment for its designated purpose.

5.3(1) Funding as stated on notices of grant awards and NSIP funding released by the department shall be available for use by each AAA for the fiscal year July 1 through June 30 annually.

5.3(2) A maximum of 10 percent of the Title III funds received from the department, as shown in the annual allotment tables, may be used for administration, unless otherwise specified in IAPI.

5.3(3) AAA shall expend no less than the designated amounts, as given in 321 IAC 6, of their Title III-B allotment, less administration costs, for services in the priority service categories of:

- a. Access;
- b. In-home services; and
- c. Legal assistance.

5.3(4) Any unexpended Title III funds which were allotted by the department for administration as shown in the department’s annual allotment tables may, in the subsequent fiscal year, be used only for program service expenditures.

5.3(5) Program income, as forecast to be received for the fiscal year identified in the area plan shall be at least 85 percent of the program income earned in the most recently completed fiscal year.

5.3(6) State funds shall not be carried over unless specifically authorized by state law.

5.3(7) OAA funds may be carried over upon department approval of an AAA written application.

321—5.4(231) Expenditures in rural areas. The department shall allot to rural areas at least 105 percent of the amounts the areas spent under Title III of the Act during the fiscal year 1978.

321—5.5(231) Funding formulas.

5.5(1) OAA federal funds—Title III.

a. Administration allotments to area agencies. The department shall award administration funds available to AAA in each fiscal year from funding under the OAA.

b. Each AAA shall receive the greater of one-fourth of 1 percent of the funds available for allotment, or \$24,000, to be used for administration or for services.

c. Each AAA shall receive the greater of four-hundredths of 1 percent or \$4,000 for each county in the AAA’s planning and service area to be used for administration or services.

d. If the sum of the amounts generated under paragraphs “b” and “c” for all AAA exceeds 10 percent of the amount available to the department for AAA allotment, the department shall reduce the amount allotted under paragraph “c” by an amount sufficient to result in the sum for all AAA generated by paragraphs “a” and “b” being equal to or less than 10 percent of the amount available to the department.

5.5(2) Intrastate service funding. Funds remaining after the application of 5.5(1), paragraphs “b” and “c,” shall be allocated to each AAA proportionate to the AAA’s weighted population to the total weighted population of the state. The weighted population shall be the sum of the number of persons residing in the planning and service area with the following characteristics multiplied by the applicable weights:

<u>Factor</u>	<u>Weight</u>
Persons aged 60 and older	1
Minority persons aged 60 and older	1
Persons aged 60 and older at or below the poverty level of income	2

321—5.6(231) State appropriations and case management allotments.

5.6(1) Elderly services. All state elderly services funds appropriated to the department, excluding those otherwise specifically identified in the appropriation, shall be allocated to AAA on the basis of persons aged 60 and older and minority persons aged 60 and older and double-weighted for persons aged 60 and older at or below the poverty level of income in the AAA planning and service area. Elderly services

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funds set aside for the case management program for the frail elderly shall be allocated on the basis of a \$45,000 block grant per AAA with the balance of funds allocated on the AAA's proportion of persons aged 60 and older.

5.6(2) Senior living program. The department shall allocate funds received from the senior living trust established in Iowa Code section 249H.4 to each AAA by utilizing, at a minimum, a formula that:

a. Shall triple-weight all of the following:

- (1) Individuals aged 75 and older.
- (2) Individuals aged 60 and older who are members of a racial minority.
- (3) Individuals aged 60 and older who reside in rural areas.
- (4) Individuals aged 60 and older who have incomes at or below the official poverty guideline as defined each year by the federal Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

b. Shall single-weight for individuals aged 60 and older. The department shall use the best available population data based on United States census reports to calculate allotments under this subrule.

321—5.7(231) Program allotment calculations.

5.7(1) Title III. The department shall calculate all allotments to AAA based on the result obtained in rule 5.6(231).

5.7(2) NSIP. AAA will receive a portion of the NSIP allotment to the state based on the proportion of an area's eligible meals related to the total of NSIP-eligible meals for all AAA.

5.7(3) Other. The department shall allocate other available funding as defined in each respective program.

5.7(4) Population data. Where applicable, the department shall use population data based on the United States Census to calculate AAA allotments under this chapter. The data shall then be used to calculate allotments for the next fiscal year starting after the data are available.

321—5.8(231) Funding estimates. It is the intent of the department to provide AAA with timely access to all allotments, whether actual or estimated, consistent with an orderly process of area plan revision and amendment. To implement the intent, the following procedures shall be followed:

5.8(1) On or before July 1 of each year, the department shall issue the planning estimate revision reflecting any federal or state awards received by that date and used to estimate any changes to the fiscal year funding allotments beginning on July 1 of that year.

5.8(2) On December 1 of each year, the department shall issue the annual planning estimate which shall reflect the most current federal awards received by that date for use in estimating projected funding allotments to AAA for the next two fiscal years.

5.8(3) On December 1 of each year, the department shall issue revised allotments for the current fiscal year which announce the projected funding available to each AAA.

5.8(4) Funds for which an AAA fails to apply will be allocated to a project consistent with the goals and objectives of the department.

321—5.9(231) Matching funds.

5.9(1) Financial participation.

a. State plan administration. The department shall use its federal allotment for state plan administration to pay not more than 75 percent of the costs of administering the state plan.

b. Area plan administration. An AAA may use its federal allotment to pay not more than 75 percent of the cost of administering an area plan.

c. Area plan services. An AAA may use its federal allotments for supportive, nutrition, and frail elderly services and its state elderly services allotment to pay not more than 85 percent of the costs of these activities.

5.9(2) OAA nonfederal match requirements. The nonfederal match may be either by allowable costs or the value of nonfederal, third-party in-kind contributions.

5.9(3) The 15 percent elderly services match requirement may be met by allowable costs or the value of third-party in-kind contributions from local sources.

5.9(4) Source of nonfederal share.

a. Cash and in-kind match. At least 25 percent of the required minimum nonfederal share of area plan administration and services in each fiscal year shall be in the form of allowable costs of the state or local public agencies, or in the form of in-kind contributions from local public agencies.

b. State match. One-third of the nonfederal share required for federally funded services shall be in the form of state-appropriated funds.

5.9(5) Match deficiency. If a match deficiency is identified regarding the nonfederal share, provisions will be made to rectify the deficiency in the following fiscal year or reduce the amount of funding to a level commensurate with the nonfederal share.

321—5.10(231) Allowable use of federal and state funds for multiyear area plan administration.

5.10(1) Federal funds. The AAA shall not use more than the amount received under subrule 5.5(1) and at least the amount of local match prescribed in subrule 5.9(3) for costs of administration.

5.10(2) State funds. Sums appropriated each fiscal year for AAA administration shall be distributed in equal amounts for each planning and service area to be used as a match for federal administrative funds distributed under rule 5.5(231).

321—5.11(231) Reallocation.

5.11(1) Federal funds. The amount of federal Title III funds which are not expended or obligated for goods and services or both to be provided by the last day of the previous federal budget year shall be available to the department for reallocation.

5.11(2) Unused state funds. If the department determines prior to the end of the fiscal year that an AAA will have unused state funds, the department may reallocate the unused funds to one or more AAA in accordance with demonstrated utilization or by a reallocation method specified in IAPI. The area agencies receiving these reallocated funds shall obligate them by the end of the fiscal year in which they are reallocated.

321—5.12(231) Restriction on delegation of authority to other agencies.

The department and area agencies on aging may not delegate to another agency the authority to award or administer funds under this part, except as provided in 321 IAC 4.

321—5.13(231) Records and reports.

5.13(1) The grantee is required to submit all performance and fiscal reports published in the department's service and fiscal reporting manual or as provided in an IAPI. Reports not received by the established due date shall be considered delinquent.

5.13(2) Recipients of funds from the department shall retain fiscal and programmatic records for not less than three years after the fiscal year in which the expenditure occurred.

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321—5.14(231) State reviews and audits.

5.14(1) The audit costs shall be negotiated and paid for by the grantee from the applicable grants.

5.14(2) The department shall provide the grantee with guidelines to be followed by the auditor.

5.14(3) Each AAA shall submit copies of the audit report as directed in the guidelines issued by the department.

321—5.15(231) Acquisition of goods and services.

5.15(1) Authority. The department and the AAA may acquire goods and services as necessary to carry out their responsibilities under the OAA, regulations, state laws or rules by the following methods:

- a. Purchase.
- b. Lease or rental.
- c. Donation.

5.15(2) Suppliers of goods and services may be:

- a. Federal, state and local governmental agencies.
- b. Public or private nonprofit organizations.
- c. Persons as defined in Iowa Code section 4.1(20).

5.15(3) Standards. All acquisitions of goods and services shall be in compliance with federal regulations, 45 CFR §74, August 25, 1994, Administration of Grants, federal law or Iowa law. Where all other factors are equal, preference will be given to Iowa contractors in compliance with state law.

5.15(4) Utilization of small businesses and minority contractors. Positive efforts shall be made to utilize small business and minority-owned business sources for supplies and services.

a. Records shall be maintained for a period of not less than three years following the fiscal year for which the contract was in effect showing names and identification numbers of small business or minority contractors contacted in regard to each contract.

b. This subrule shall not be construed to require the award of contracts that favor small business or minority contractors when this would result in higher cost to the department or the AAA.

5.15(5) Free competition. All acquisition transactions, whether negotiated or advertised, shall be conducted in a manner to provide maximum open and free competition. Special attention shall be given to preventing organizational conflicts of interest or other noncompetitive practices which may restrict or eliminate competition.

5.15(6) Description of goods or service. Purchase, lease or rental invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical or operational requirements for the requested material, product, or service.

a. The description shall not contain features which unduly restrict competition.

b. "Brand name or equal" descriptions may be used to define the required performance or other unique requirements of a proposed acquisition. When so used, the specific quality, operational or performance features of the name brand which must be met by bidders shall be clearly specified.

c. The invitations for bids shall clearly set forth all requirements that the bidder shall fulfill in order for the bid to be evaluated and accepted.

5.15(7) Appropriate acquisition documents and prohibited costing method. The type of method used (i.e., fixed-price contract, cost reimbursement contract, purchase order, incentive contract, negotiation) shall be appropriate for the particular acquisition and for promoting the best interest of

the program involved. The "cost plus a percentage of cost" method of contracting is prohibited.

5.15(8) Bids. To procure goods or services, the department or AAA shall use the following procedures:

a. When the estimated one-year value is equal to or greater than \$5,000 but less than \$50,000 or when the estimated multiyear aggregate value, including all renewals, is \$15,000 or more, but is less than \$150,000, the department or AAA, in the department's or AAA's sole discretion, shall use either an informal or formal competitive selection process.

b. When the estimated one-year value of the contract is equal to or greater than \$50,000 or the estimated value of a multiyear contract in the aggregate, including all renewals, is equal to or greater than \$150,000, the department or AAA shall use a formal competitive selection process to procure the goods or services.

c. The requirement to use competitive selection to obtain a provider or supplier applies whether an AAA obtains those services from a public or private entity. If the successful proposal for the service or supplier is from a public entity and the contract is designated as a 28E agreement, the AAA shall not be the initiating agency for that agreement.

5.15(9) Exceptions. Acquisitions may be accomplished through noncompetitive negotiation if it is not feasible to use competitive selection. Contracts may be negotiated under the following circumstances:

a. The item is available only from a single source; or

b. A public exigency or emergency creates an urgency for the item that will not permit delays incident to competitive selection; or

c. The federal grantor agency authorizes noncompetitive selection; or

d. After solicitation of a number of sources, competition is determined inadequate.

When the client of a specific service category has freedom of choice between multiple AAA-authorized service providers, the limitations given above do not apply.

5.15(10) Selection of provider. When bids are obtained, the award shall be made to the bid that is responsive to the requirements of the solicitation and is most advantageous to the item recipient when price and other factors are considered. Any and all bids may be rejected and new bids requested if the bids received are not acceptable.

5.15(11) Methods of advertising. The invitation for bids shall be advertised by two separate publications in the official newspaper(s) designated by the county in which the goods or services are to be furnished. Additional publication in newspapers other than those above is not prohibited. The first publication shall not be less than 30 days prior to the date set for receiving bids. Additional methods of advertising may be used including contacting minority contractors as specified in subrule 5.15(4).

5.15(12) Responsible bidders. Whether obtained through formal advertising or negotiation, contracts shall be made only with responsible suppliers who possess the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to matters such as contractor integrity, record of past performance, financial and technical resources, or accessibility to other resources necessary for satisfactory completion of the contract.

321—5.16(231) Restrictions for multipurpose agencies designated as AAA. When a multipurpose agency designated as the grantee for an AAA is the single organizational unit serving the designated planning and service area, no grant or contract is permitted between the AAA office and

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another division, officer or personnel of the multipurpose agency without the express approval of the department.

321—5.17(231) Records—contract administration. The department and AAA shall maintain the following records as applicable:

5.17(1) Records for purchases of more than \$50,000 or \$150,000 aggregate shall provide at a minimum the following documentation:

- a. Copies of publication and other advertising;
- b. Minority contractors contacted;
- c. Justification for the use of negotiation in lieu of advertising;
- d. Basis for selection of supplier;
- e. Basis for the price negotiated.

5.17(2) A system for contract monitoring shall be maintained by the department and AAA to ensure supplier compliance with terms, conditions and specifications of the contract and to ensure adequate and timely follow-up as necessary for failure to perform or for any other problem with delivery of goods or services.

5.17(3) All parties utilizing funds from the department and AAA shall maintain records and make reports as required by the terms of the contract to provide for efficient contract administration and monitoring.

5.17(4) All records and reports shall be open to public inspection unless otherwise provided by law.

321—5.18(231) Recapture of funds for facilities.

5.18(1) Recapture from owner. The United States government and the state of Iowa are entitled to recapture the appropriate portion of the funds used by a facility owner for acquisition or construction of a facility used for senior programs or services. The owner shall notify the department in writing if within 10 years after acquisition or within 20 years after construction completion the following circumstances apply:

- a. The owner of the facility ceases to be a public or non-profit agency; or
- b. The facility is no longer used for senior activities.

5.18(2) Amount of recapture. The amount to be recovered is that proportion of the current value of the facility equal to the proportion of federal or state funds contributed to the original cost. The current value of the facility is determined by written agreement between the owner of the facility and the federal or state government, or by an action in the federal or district court in the district where the facility is located.

5.18(3) Recapture in leased facility.

a. For a facility no longer leased for senior activities, the department shall recapture a portion of federal and state funds from the lessors of that facility within a period of time equal to one year for every \$1,000 of permanent alterations or renovations.

b. Recapture share. The amount recovered under paragraph 5.18(3)“a” shall be the total federal and state funds contributed to the original cost reduced by \$1,000 for each year the facility was used for senior programs or services.

321—5.19(231) Property management.

5.19(1) Responsibilities of grantees and suppliers. All grantees or suppliers that use funds received from the department or AAA to purchase property, including real property, services or equipment shall maintain appropriate records of all such property.

5.19(2) Transfer upon termination. Upon the termination of the grant or contract period, the grantee or supplier is required to transfer the property back to the department or

AAA. The property shall be returned in as near the original condition as possible.

5.19(3) Standards. The standards and guidelines utilized by the department to implement this rule shall be in compliance with U.S. Department of Health and Human Services property management regulations, Administration of Grants, 45 CFR 74, November 4, 1988, unless a higher standard is required by this chapter. Iowa Aging Program Instruction 93-11, dated December 14, 1992, was issued as supplemental guidance to these regulations.

These rules are intended to implement Iowa Code chapter 231.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 6, “Area Agency on Aging Planning and Administration,” Iowa Administrative Code, and adopt a new Chapter 6 with the same title.

This chapter has been completely reorganized and rewritten. Text has been moved from Chapters 4 and 5 to this chapter, and rules have been rephrased to eliminate duplicative language.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 6 and adopt the following **new** chapter:

CHAPTER 6 AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

321—6.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“Access” or “access services” means case management, transportation, outreach, information and assistance.

“Entrepreneurial activities” means the manufacturing, processing, selling, offering for sale, renting, leasing, deliv-

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ering, dispensing, distributing or advertising of goods or services for profit; or a contract or agreement that an AAA will provide specific named service(s) for third-party payees.

“Priority services” means access, in-home and legal assistance services.

321—6.2(231) Area plan.

6.2(1) Area plan. Each AAA shall develop and administer an area plan.

6.2(2) Duration and format of the area plan.

a. The area plan shall be for the four-year period specified by the department, with annual updates.

b. Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

6.2(3) Comprehensive and coordinated delivery system. The multiyear area plan shall provide for the development of a comprehensive and coordinated service delivery system for all supportive and nutrition services needed by elders in the planning and service area to:

a. Facilitate access to and utilization of all existing services; and

b. Develop supportive and nutrition services effectively and efficiently to meet the needs of elders.

6.2(4) Requirements. An area plan shall provide for a comprehensive and coordinated service delivery system as defined in:

a. The federal Act;

b. Older Americans Act Title III Regulations; Code of Federal Regulations, Title 45, Volume 4, Part 1200 (45 CFR 1321);

c. This chapter;

d. IAPI issued by the department.

6.2(5) Plan content. The area plan shall, at a minimum, contain the following information:

a. Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and

b. Objectives and budget for each year of the designated four-year period and methods to obtain those objectives; and

c. Client estimates. Area agencies shall estimate the number of elders with the characteristics identified in Form 3 A 1 of an IAPI.

6.2(6) Area plan amendments and revisions.

a. Amendments. The AAA shall amend the area plan and submit it to the commission for approval when:

(1) A new or amended state or federal statute, rule or regulation requires new information or conflicts with any existing plan provisions;

(2) A United States Supreme Court decision changes the interpretation of a statute or rule;

(3) Local law, organization, policy or agency operations change and are no longer accurately reflected in the area plan;

(4) The department requires amendments;

(5) The grantee proposes to change the designation of the single organizational unit or component unit responsible for programs under the federal Act or state law; or

(6) The area agency proposes to add or delete a service category.

b. Revision. The AAA may be required to revise the plan and submit it to the department for approval if:

(1) A department funding source to the area agency changes; or

(2) A program requirement changes.

6.2(7) Procedures for area plans, plan amendments and revisions.

a. Public hearing(s). The AAA shall hold at least one public hearing on the area plan and all plan amendments as required in this chapter. Priority services shall appear as a distinct agenda item for any hearing.

(1) The public hearing(s) shall be held prior to submission of the area plan or amendment(s) at a time which permits elders, public officials, and other interested parties reasonable opportunity to participate. The hearing(s) shall be held at a barrier-free, fully accessible location.

(2) The AAA shall advertise the hearing by sending notice to all known groups of elders, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

b. Review and comment by the advisory council.

(1) The AAA shall submit the area plan, amendments and revisions for review and comment to the AAA advisory council.

(2) The official representative of the AAA shall sign the plan, amendment or revision to signify that the AAA has completed all of the requirements of this chapter. The AAA shall then submit the area plan, amendment or revision to the department for review.

6.2(8) Commission review. Plans and plan amendments may be approved by the commission after they have been processed in accordance with the process given in this chapter. Revisions may be approved by the department after they have been processed in accordance with the process given in this chapter.

6.2(9) Appeals. Any person may appeal a denial of approval of an area plan, plan amendment or revision as provided in 321 IAC 4.

6.2(10) Area profile. Each AAA shall submit to the department a profile in accordance with the time frame and procedures as issued in department IAPI. The profile shall contain, but not be limited to, the following AAA information:

a. Affirmative action plan;

b. Table of organizational structure;

c. Inventory of nutrition sites and senior centers;

d. Listing of the area agency's designated community focal points; and

e. Listing of the officers of the AAA board of directors.

321—6.3(231) Area agency administration.

6.3(1) Full-time director. The AAA shall employ a qualified full-time director and may employ other staff as necessary to manage and monitor the area plan.

6.3(2) Director's responsibility. It is the responsibility of the AAA director to:

a. Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;

b. Develop the area plan;

c. Implement organizational operations;

d. Budget for services and operations;

e. Coordinate implementation of services; and

f. Monitor and evaluate services.

6.3(3) Discrimination. The AAA shall offer equal opportunities for employment or promotion to all employees and to applicants who meet the qualifications of the open position. Discrimination against any person because of gender, race, national origin, age, political affiliation, creed, color, religion, physical or mental disability, or other nonmerit fac-

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tors is prohibited during any aspect of personnel administration and during employment.

6.3(4) Affirmative action plans. Each AAA shall develop an employment affirmative action plan which shall be submitted as part of the profile required in this chapter. All affirmative action plans shall comply with the requirements as given in IAPI.

6.3(5) Training and development requirements. Each AAA shall have a plan and procedures that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's elder population.

321—6.4(231) Confidentiality and disclosure of AAA information.

6.4(1) Confidentiality. AAA shall implement procedures to ensure that no information in possession of an AAA, or an entity providing services under programs funded by the department, is disclosed in a form identifiable with an individual without that individual's informed consent regardless of the source of the information.

6.4(2) Public accessibility to manuals, guidelines, and standards. Copies of all manuals, guidelines, and standards referred to by these rules shall be maintained by the AAA and available for public inspection.

321—6.5(231) AAA contact information. Information on how to contact the appropriate AAA office may be obtained by sending a request to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; or by telephone at (515)242-3333; or by visiting the department's Web site www.state.ia.us/elderaffairs/.

321—6.6(231) Duties of AAA.

6.6(1) General. Each AAA shall fulfill the AAA duties specified in the federal Act, Iowa Code section 231.33 and this chapter. AAA shall:

a. Carry out functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation designed to lead to and maintain a comprehensive and coordinated community-based system. This system shall serve the PSA so that elders may lead independent, meaningful and dignified lives in their own homes and communities for as long as possible;

b. Strive to offer a range of services which are readily accessible to all elders by utilizing public, private and voluntary entities and personal resources of the client;

c. Encourage collaborative decision making among public, private, voluntary, religious and fraternal organizations, as well as elders;

d. Assist in determining and providing special assistance or resources to the most vulnerable elders who are in danger of losing their independence; and

e. Perform all functions as delineated in the area plan.

6.6(2) Additional duties include:

a. Attempt to involve the private bar and legal services corporation in the PSA in legal assistance activities;

b. Submit all reports in accordance with IAPI of the department;

c. Coordinate AAA activities with mental health services provided by community health centers and other non-profit private or public organizations;

d. Compile and summarize information on institutions of higher education in the PSA which offer courses of study to elders at a no- or reduced-tuition rate and disseminate the information to elders at their gathering places;

e. Seek out elders who may be eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act, medical assistance under Titles XVIII and XIX of the Social Security Act, and benefits under the Food Stamp Act of 1977. The AAA shall provide information on the requirements for eligibility to receive these benefits and assist in applying for appropriate assistance and benefits;

f. Coordinate planning by individuals, agencies and organizations interested in the prevention of abuse, neglect and exploitation of elders and assist in implementation of educational and awareness activities, in coordination with the long-term care resident's advocate program;

g. Coordinate planning with other agencies and organizations to provide health promotion activities for elders.

321—6.7(231) AAA advisory council.

6.7(1) Member requirements. The AAA shall establish an advisory council composed of members, at least one-half of whom are aged 60 and older, which shall include:

a. Recipients of services under the Act, including minority elders and elders residing in rural areas;

b. Representatives of elders;

c. Current local elected officials;

d. The general public;

e. Representatives of health care provider organizations, including providers of veterans' health care, if appropriate;

f. Representatives of supportive and nutrition service providers; and

g. Persons with leadership experience in private and volunteer sectors.

6.7(2) Duties. It shall be the specific responsibility of the advisory council to advise the AAA and:

a. Advocate for elders in the PSA by keeping informed of all activities and proposals concerning the elders;

b. Review and make recommendations on the content, formulation, administration and priorities of the area plan and participate in public hearings on the area plan;

c. Serve as an information link between the AAA and providers of services to elders in the PSA;

d. Review and comment on community policies, programs and actions which affect elders;

e. Assist in generating local support for development of programs for elders in the area.

6.7(3) Frequency of meetings. The AAA advisory council shall meet at least quarterly.

6.7(4) Staff support. The AAA shall provide staff and assistance to the AAA advisory council.

6.7(5) Bylaws. The AAA advisory council bylaws shall contain at least the basic bylaws: name, purpose, members, officers, meetings, committees, parliamentary authority and procedure for amendment of bylaws. The bylaw on membership shall include, but is not limited to, the number of, selection process and length of terms for members.

321—6.8(231) Emergency situations.

6.8(1) Prior to and after a natural disaster or other safety-threatening situation, each AAA shall plan and coordinate with other public and private entities for safe and timely continuity of service and the restoration of normal living conditions for elders. This shall include:

a. Alerting elders of the impending danger;

b. Assessing the needs of elders after the event occurs; and

c. Ensuring that identified needs are met through collaboration with other agencies.

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6.8(2) To further this purpose, each AAA shall:

- a. Include in the procedures manual established as required in this chapter procedures to respond to emergency or disaster situations;
- b. Include in the development and training plan methods of training for staff, contractors, and other interested parties in response to emergency or disaster situations; and
- c. Include in subgrants or contracts provisions for responding to emergency or disaster situations including, but not limited to, shifting funds from one activity to another or from one contractor to another.

6.8(3) Services. As a part of emergency response, the AAA may plan, coordinate and provide services funded under other programs consistent with responsibilities of an AAA.

321—6.9(231) AAA procedures manual. A procedures manual shall be developed and kept current by the AAA. The manual shall, at a minimum, establish procedures to be followed in:

6.9(1) Establishing and maintaining information and assistance availability to ensure that elders within the PSA will have convenient access to services;

6.9(2) Conducting periodic evaluations, which may include participant satisfaction surveys of activities carried out under the area plan;

6.9(3) Furnishing appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers;

6.9(4) Establishment of a request for proposal process that includes methods of selection of providers and methods for award of grants or contracts under the area plan;

6.9(5) Resolving complaints by any aggrieved party directly affected by an action or omission of the AAA. AAA appeal procedures shall be in compliance with the relevant federal and state statutes, regulations and rules and shall contain at least the following procedures and time frames for complaint resolution:

- a. Acknowledgment of the complaint;
- b. Process for attempting to informally resolve the complaint;
- c. Time frame for sending a hearing notice;
- d. Process for holding a hearing;
- e. Notification of the outcome of the hearing;
- f. Appeal to the next higher authority;

6.9(6) Ensuring confidentiality, so that no information about or obtained from an elder is disclosed in a form that identifies the person without the person's informed consent;

6.9(7) The assessment and monitoring methods for programs and subcontracts funded by the AAA. This shall include documentation of quarterly monitoring of performance and on-site assessment and report at least annually;

6.9(8) Response to emergency or disaster situations;

6.9(9) Development of methods by which priority for delivery of services is determined;

6.9(10) Obtaining comments or suggestions from recipients about services provided by the AAA;

6.9(11) Determination of an individual's eligibility for home-delivered nutrition services, including specific criteria established by the AAA for:

- a. Initial and subsequent six-month assessments of the individual's eligibility for home-delivered meals;
- b. Determination of the number of days per week the individual has a need for home-delivered meals;
- c. Determination of the individual's need for other home-delivered nutrition services;

6.9(12) Assurance that any facility housing a service will fully comply with all current federal, state or local health, fire, safety, sanitation, accessibility and licensure requirements;

6.9(13) Methods of monitoring service providers to ensure their performance is in accordance with terms, conditions and specifications for funding, including length of funding period, and the use of project income and methods of providing service;

6.9(14) If appropriate, offering a meal to individuals providing volunteer services during meal times on the same basis as meals are offered to eligible individuals;

6.9(15) Offering a meal to nonelderly individuals with disabilities who reside at home with and accompany eligible elders to a meal site;

6.9(16) Offering home-delivered meals to nonelderly individuals with disabilities when their elderly caregiver is eligible for a home-delivered meal;

6.9(17) Increasing public education and awareness in the prevention of abuse, neglect and exploitation of elders;

6.9(18) Identifying the public and private nonprofit entities involved in the prevention, identification, and treatment of abuse, neglect, and exploitation of elders and determining methods to respond to the needs of elders at risk; and

6.9(19) Offering health promotion activities and information to eligible individuals.

321—6.10(231) Contracts and subgrants.

6.10(1) A contract or agreement between an AAA and a provider of a specific service in the PSA shall not restrict the AAA from contracting with other provider(s) of similar services.

6.10(2) Contract file. AAA shall maintain a file of all current contracts with service-providing agencies or organizations. These files shall be made available for monitoring and assessment by the department.

6.10(3) Contracts with for-profit organizations. An AAA must request prior approval from the department of any proposed service contracts with for-profit organizations under an area plan.

a. A separate approval request, using the request form provided by the department, shall be filed for each contract between the AAA and a provider for a service that is proposed to be delivered by a for-profit organization.

(1) The request for approval shall be submitted to the department at least 30 days prior to the signing of the contract.

(2) All applicants to provide services for which the contract is proposed shall be listed on the request form.

b. The department may approve the contracts only if the AAA demonstrates that the for-profit organization can provide services that are consistent with the goals of the AAA as stated in the area plan.

c. Services shall mean the services described in the uniform definitions of services contained in IAPI issued by the department.

321—6.11(231) Direct service.

6.11(1) An AAA must submit a request to provide direct service as part of the area plan. The request may be approved by the department based on documentation of the criteria given in subrule 6.11(3). The following services may be furnished directly by the AAA and are exempt from the requirements in subrule 6.11(3):

- a. Information and assistance;
- b. Outreach;
- c. Case management;
- d. Advocacy representation;

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- e. Public education;
- f. Employment services;
- g. Mental health outreach;
- h. Coordination of efforts concerning the prevention of elder abuse.

6.11(2) Public hearing. Prior to the submission of the area plan, the AAA shall hold a public hearing to obtain comments regarding direct service(s) planned by the AAA. This hearing may be held separately or as a part of the hearing for the area plan.

a. Notice of the hearing shall be published at least 30 days prior to the hearing and shall specify the direct service(s) which the AAA plans to provide.

b. The AAA shall prepare and submit to the department a written record of the public hearing.

6.11(3) Criteria. The commission may approve an AAA request to provide direct service.

a. Approval will be based upon documentation of the following as submitted by the AAA:

(1) Direct provision of service is necessary to ensure an adequate supply of the service, and no potential provider was identified during the public hearing process; or

(2) The proposed service will be of comparable quality in the view of the AAA advisory council, and will meet or exceed service standards developed by the AAA; and

(3) The AAA can provide a service of equal quality at lower cost than another provider.

b. The department may consider other factors including:

(1) The demonstrated capacity of the AAA to deliver services consistently and reliably;

(2) The economic impact of transition from a contract provider to the AAA;

(3) Consideration of any possible disruption of service;

(4) Input from the AAA advisory council; and

(5) Comments from the public.

6.11(4) Conditional approval. If the criteria for approval of a request to provide direct services are not met, a condition may be placed on the area plan approval.

321—6.12(231) Noncompliance. When an AAA's performance in any service does not meet the standards set by the department, the department shall initiate the procedure outlined in 321 IAC 4.

321—6.13(231) Priority service expenditures.

6.13(1) An AAA shall spend a specified percentage of its supportive services allotment on priority services, excluding the amount of federal funds used for administration. Funds shall be spent in each of the following priority service categories in at least the minimum percentage most recently determined by the commission:

a. Access services as defined in this chapter – 10 percent;

b. In-home services – 5 percent; and

c. Legal assistance – 3 percent.

6.13(2) Public hearing. The hearing on the area plan shall include the priority services and priority services requirement as a distinct agenda item with a specific time set for the beginning of that portion of the hearing.

a. Discussion at the hearing shall include the level of priority services being provided by all other agencies.

b. Record of the public hearing. The AAA shall prepare a written record of the hearing.

321—6.14(231) Waivers of priority service expenditures.

6.14(1) An AAA shall request a waiver from the priority service expenditures in 321 IAC 5.3(3) if it does not propose

sufficient funding to allow elders to have convenient access to a service.

6.14(2) The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 6.13(231) for any category of service for which the AAA demonstrates the following:

a. That the services being furnished by other providers meet the needs of elders in the PSA for that category of service; or

b. That the AAA has made every reasonable effort to meet the need for a specific category of service.

321—6.15(231) Requirements for service providers.

6.15(1) Contributions. The AAA shall consult with the relevant service providers and elders in the PSA to determine the best method for accepting voluntary contributions. As established by contract with the AAA, each service provider, including an AAA providing direct service, shall:

a. Provide each elder with a voluntary opportunity to contribute to the cost of the service by displaying a suggested contribution schedule that takes into consideration income ranges of eligible individuals in local communities;

b. Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

c. Protect the privacy and confidentiality of each elder with respect to the person's contributions;

d. Utilize appropriate procedures to safeguard and account for all contributions against loss, mishandling or theft by obtaining bonding for all employees and volunteers in accordance with instructions issued by the department in an IAPI;

e. Use all contributions to expand the service for which such contribution is given. Nutrition service providers shall use all contributions to increase the number of meals served.

6.15(2) Failure to contribute. A provider that receives department funds may not deny any elder a service because the person will not or cannot contribute to the cost.

6.15(3) Obtain views of elders. Each provider shall utilize procedures determined by the AAA for obtaining the views of participants about the services they receive. A report of procedures utilized and findings shall be issued by the AAA within six months of the signing of the contract.

6.15(4) Seek other sources of funding. Prior to requesting Title III funding, service providers shall demonstrate efforts to seek funds from other federal, state, and local sources.

6.15(5) Compliance by service providers. The AAA shall incorporate in its contract with each service provider an assurance that funds are used in compliance with federal guidelines.

321—6.16(231) Entrepreneurial activities of AAA. An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

6.16(1) Demonstrated need—use of funds. AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

a. To further extend services and opportunities for elders; or

b. To fund new services and opportunities for elders provided that these services or opportunities are compatible with the AAA functions and goals.

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6.16(2) Restrictions. An AAA shall not use funds received from the department in connection with entrepreneurial activities.

a. Entrepreneurial activities shall not be undertaken until they have been reviewed by the advisory council and approved by the AAA governing board.

b. An AAA that engages in entrepreneurial activities shall not create the impression that the activity is being carried on under governmental authority.

c. Funds received as a result of entrepreneurial activities shall be monitored and accounted for according to generally accepted accounting and auditing practices commensurate with the activities.

d. Entrepreneurial activities shall be pursued only if the duties and responsibilities required of AAA in this chapter are consistently provided by the AAA in a capable manner.

e. Entrepreneurial activities shall benefit all eligible persons in the PSA, particularly elders in the greatest economic and social need and low-income minority persons.

6.16(3) Department review.

a. An AAA shall inform the department in writing not less than 160 calendar days prior to the initiation of an entrepreneurial activity of an ongoing nature. The notification shall describe the proposed activity, proposed source of funds, and the needs being addressed.

b. The department shall respond in writing within 30 calendar days to acknowledge receipt of the information, request clarification, or request a delay in implementation. For informational purposes, the department shall provide a copy of the response to the commission.

c. An AAA that receives no response from the department within 30 days may assume that no additional submission of information is required.

d. If unresolved issues remain after 60 calendar days of receipt of the information, the commission will be informed of those issues at the next commission meeting.

6.16(4) Commission or department action. An AAA contracting for entrepreneurial activities shall:

a. Provide the contract to the department for review prior to signing; and

b. Include the activities in the area plan, plan amendments or revisions; and

c. Require a minimum payment from the contractor to fully cover all costs of the activity, including overhead and administrative costs, to eliminate the possibility of use of Title III funds.

6.16(5) Community interest.

a. Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present appearance of, conflict of interest.

b. An AAA shall work cooperatively with community leaders, groups and organizations in order to participate in entrepreneurial activities.

These rules are intended to implement Iowa Code chapter 231.

ARC 4664B

**ELDER AFFAIRS
DEPARTMENT[321]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 7, “Area Agency on Aging Service Delivery,” Iowa Administrative Code, and adopt a new Chapter 7 with the same title.

This chapter has been completely reorganized and rewritten; a large portion of the text of the current chapter has been moved to other chapters dealing with Area Agency on Aging functions. Language has been rephrased to eliminate duplicative language and to align the chapter with current federal regulations. The requirements for Title III-G of the Older Americans Act covering prevention of abuse and neglect have been deleted from this chapter; a new chapter is created to cover all aspects of this subject (see **ARC 4666B** herein).

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 7 and adopt the following **new** chapter:

CHAPTER 7

AREA AGENCY ON AGING SERVICE DELIVERY

321—7.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“Child” means an individual who is 18 years of age or younger.

“Family caregiver” means an adult family member or another individual who is an informal provider of in-home and community care to an elder.

“Grandparent or elder who is a relative caregiver” means a grandparent or stepgrandparent of a child or a relative of a child by blood or marriage, who is 60 years of age or older and:

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1. Lives with the child;
2. Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers; and
3. Has a legal relationship to the child such as legal custody or guardianship or is raising the child informally.

“Legal assistance” means legal advice and representation provided by an attorney to elders with economic or social needs and, to the extent feasible, includes counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney and counseling or representation by a nonlawyer where permitted by law.

“Multipurpose senior center” (OAA) means a community facility for the organization and provision of a broad spectrum of services, which shall include, but not be limited to, provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for elders.

“Nutrition Services Incentive Program” or “NSIP” means the Nutrition Services Incentive Program established under the OAA.

“Site” means a facility designated for provision of congregate meals or other nutrition-related services.

“Therapeutic menu” means a soft, low-fat, low-sodium, or controlled calorie menu.

321—7.2(231) Service delivery. If the requirements of 321 IAC 6 are met, each AAA may contract for service delivery or provide services directly. All applicable terms, procedures and specifications of the department shall be followed contingent upon the source of funding under the Act. At a minimum, the contract for nutrition services shall include nutrient requirements for meals; food safety, including time limits for transporting food; use of project income; length of contract; cost per unit; participant evaluation surveys as available; and performance requirements to ensure accountability and monitoring.

321—7.3(231) Outreach for greatest need. Each AAA shall conduct outreach efforts to identify the elders with greatest economic or social needs and to inform the elders of the availability of services. The outreach efforts shall place special emphasis on rural, low-income, minority and American Indian elders.

321—7.4(231) Delivery of service.

7.4(1) Facility and focal points. Each AAA shall designate a focal point for a comprehensive and coordinated system of services in each served community, giving special consideration to the designation of multipurpose senior centers that currently or potentially can accommodate the collocation of services, where feasible.

7.4(2) Focal points. The area profile submitted by the AAA as required in 321 IAC 6 shall specify the communities and facilities which are designated as focal points.

7.4(3) In the designation of focal points, the AAA shall consider:

- a. Communities with the greatest incidence of elders with the characteristics as given in 7.3(231) and the efforts of voluntary organizations in the community;
- b. The needs of participants and the delivery pattern of services funded under the Act and from other sources;
- c. The location of current multipurpose senior centers and congregate nutrition sites;
- d. The geographic boundaries of communities and natural neighborhoods; and
- e. The location of facilities suitable for designation.

7.4(4) Developing collocation of services at the focal point. The AAA shall:

- a. Encourage service providers to coordinate and collocate their services;
- b. Coordinate with public and private agencies, institutions and elected officials in the community to achieve maximum collocation, coordination, and access to other services or opportunities for the elderly;
- c. Ensure that information and referral and emergency service programs are provided;
- d. Ensure that services funded under the Act will be based at, linked to, or coordinated with focal points; and
- e. Establish guidelines for operating schedules which are convenient for elders in the community.

321—7.5(231) Funding for services and program facilities.

7.5(1) The AAA may distribute funds received from the department to a public or private nonprofit agency for construction, acquisition, remodeling, leasing or renovation of a facility, including a mobile facility, to be a focal point for providing programs or services.

a. In distributing these funds, the AAA shall obtain the approval of the commission before contracting for the construction of a facility.

b. The commission may approve the construction of a facility after considering the views of the AAA and reviewing material from the AAA that documents that there are no suitable facilities available to be a focal point for service delivery.

7.5(2) The AAA may make an award for purchasing or constructing a facility:

- a. If there are no suitable facilities for leasing;
- b. If the AAA’s budget shows that sufficient funds are or will be available;
- c. To meet the nonfederal share of the cost of purchase or construction of the facility;
- d. For effective use of the facility for the purpose for which it is being acquired or constructed;
- e. To pay the cost of professional and technical personnel required for the operation of facilities used to provide services to elders under the cost-share terms and conditions set by the department.

7.5(3) Shared facilities. In a facility that is shared with other age groups, funds received from the Act may support only:

- a. That part of the facility used by older persons; or
- b. A proportionate share of the costs based on the extent of use of the facility for services or programs for the elder individuals.

321—7.6(231) Compliance with health, safety and construction requirements. A recipient of any award from the department for a facility housing a program or service shall comply with all applicable state and local health, fire, safety, accessibility, building, zoning, and sanitation laws, ordinances and codes including:

1. Rules of the state fire marshal adopted pursuant to Iowa Code chapter 17A, which apply to the occupancy type of the facility;
2. Applicable requirements for accessibility of the facility to persons with disabilities, including but not limited to provisions of the state of Iowa building code, the federal Americans with Disabilities Act, federal Fair Housing Act and related regulations; and
3. Provisions of any local building code in force in the jurisdiction in which the facility is located and any provisions

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of the state of Iowa building code which apply statewide. If the facility is located in a jurisdiction in which no local building code is in force, the facility shall comply with the state of Iowa building code in its entirety.

321—7.7(231) Term of use of an acquired or constructed facility. A recipient of funds under the Act that uses these funds for the acquisition or construction of a facility housing a program or service shall comply with the requirements of the Act and other applicable federal requirements regarding the term of use of such facility.

321—7.8(231) Restrictions.

7.8(1) Membership fees. Payment of a membership fee shall not be required of participants in programs and services offered in facilities that receive or have received funds under the Act.

7.8(2) Sectarian use of a facility prohibited. A facility altered, renovated, acquired, leased or constructed using funds under the Act shall not be used for sectarian instruction or as a place for religious worship.

321—7.9(231) Information and assistance services.

7.9(1) The AAA shall provide for information and assistance services sufficient to ensure that all elders within the PSA have convenient access to the services.

7.9(2) English not principal language. In a PSA in which 3 percent of the elder population does not speak English as the principal language, the service provider must provide information and assistance services in the language spoken by elders.

321—7.10(231) Legal assistance requirements. The provisions and restrictions in this rule apply only to legal assistance providers and only when they are performing tasks covered by Section 307(a)(11) of the Act.

7.10(1) Provider requirements. The AAA shall award funds to the legal assistance provider(s) that most fully meets the standards given in this rule. The legal assistance provider(s) shall:

- a. Have staff with expertise in specific areas of law affecting elders with economic or social needs and give priority to issues related to income, health care, long-term care, nutrition, utilities, housing, protective services, abuse, neglect, age discrimination and defense of guardianship;
- b. Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting elders with economic or social needs;
- c. Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care resident's advocate program or elder abuse initiatives programs;
- d. Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound elders effectively;
- e. Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language; and
- f. Coordinate the provision of legal assistance with private bar attorneys and legal services corporation state grantees.

7.10(2) Client income disclosure. A legal assistance provider shall not require an elder to disclose information about income or resources as a condition for providing legal assistance under this rule.

7.10(3) Client information. A legal assistance provider may ask about an elder's financial circumstances only as a part of the process of providing legal advice or counseling

and representation, or for the purpose of identifying additional resources and benefits for which an elder may be eligible.

7.10(4) Assistance allowed. Nothing in this rule is intended to prohibit an attorney or staff attorney from providing any form of legal assistance or to interfere with the fulfillment of the attorney's professional responsibilities.

7.10(5) Provider compliance with OAA regulations. The legal assistance provider and its attorney(s) and employee(s) shall comply with all federal and state laws, regulations and rules which govern ethical and professional conduct and the practice of law.

7.10(6) An AAA shall not require a provider of legal assistance to reveal information protected by attorney-client privilege.

7.10(7) The department will be responsible for the following:

- a. Providing for the coordination of the furnishing of legal assistance to elders within the state;
- b. Providing advice and technical assistance in the delivery of legal assistance to elders within the state;
- c. Supporting the provision of training and technical assistance for legal assistance for elders; and
- d. Assigning personnel, one of whom shall be known as a legal assistance developer, to provide state leadership in developing legal assistance programs for elders throughout the state.

321—7.11(231) Disease prevention and health promotion under Title III-D of the Act. AAA shall use Title III-D funds to provide disease prevention and health promotion services and information at multipurpose senior centers, at congregate meal sites, through home-delivered meals programs or at other appropriate sites.

321—7.12(231) Nutrition services.

7.12(1) Purposes of the program. The purposes of the nutrition services program are to:

- a. Provide meals and other nutrition-related services, including outreach and education to elders;
- b. Provide information and referral services, health and human service counseling, recreation activities, and access to nutrition services to participants when services are needed; and
- c. Provide activities of interest to elders on each day the congregate meal site is open including a monthly nutrition education program under the supervision of a licensed dietitian if the nutrition education provides medically oriented information.

7.12(2) Assessment of need. The AAA shall determine the best location for nutrition services within the planning and service area at least once during the long-range plan development cycle. The needs of the community will be considered in determining the locations for nutrition services.

7.12(3) Inspection of congregate nutrition sites. All congregate nutrition sites shall be inspected by the department of inspections and appeals and shall have a current food service establishment (restaurant) license posted in the congregate nutrition site.

7.12(4) The AAA shall ensure that nutrition funds are used to:

- a. Provide at least one meal per day in a congregate nutrition site or provide home-delivered meals based upon a determination of a participant's need.
- b. Provide other nutrition services to ensure that the maximum number of eligible elders, with emphasis on the frail, those with greatest social and economic need, and the isolated, shall have the opportunity to participate.

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c. Provide nutrition screening and counseling as appropriate and nutrition education services to address assessed needs.

7.12(5) Food stamp program. The AAA and nutrition service providers shall assist participants in taking advantage of benefits available to them under the food stamp program by providing current information to participants in both the congregate and home-delivered meals programs. Nutrition service providers shall be certified to accept food stamps as contributions for meals.

7.12(6) Licensed dietitian. Each AAA must utilize the services of a licensed dietitian to provide technical assistance in nutrition program management and to ensure that the project provides meals that comply with the RDA/AI.

7.12(7) The AAA shall develop procedures to:

a. Ensure that food service personnel, both paid and volunteer, conform to hygienic food handling techniques and to standards given in the current edition of "Center for Food Safety and Applied Nutrition—Food Code" published by the U.S. Food and Drug Administration;

b. Provide for ongoing training on safety, hygienic food handling and sanitation for both volunteer and paid food service personnel;

c. Ensure that food service personnel, both paid and volunteer, are provided with job descriptions and standards of performance which shall be evaluated annually; and

d. Regulate the use of foods remaining after serving at congregate meal sites.

321—7.13(231) AOA NSIP programs.

7.13(1) The AAA shall have an agreement with the department to receive commodities, cash or a combination of commodities and cash.

7.13(2) The department shall allocate all food, cash or the combination of food and cash received from AOA to AAA based on each AAA's proportion of the total number of meals served to eligible recipients in the state.

7.13(3) The AAA shall comply with the requirements of 7 CFR §250, June 3, 1988, for participation in the AOA program.

7.13(4) AAA electing to receive commodities shall maintain perpetual inventories of all commodities at each site and storage area and must submit an areawide inventory at least quarterly to the department within 30 days after the reporting period.

7.13(5) AAA shall comply with provisions of state laws regarding safe and sanitary handling of food, equipment and supplies. Nutrition service providers shall accept and use foods made available by AAA.

7.13(6) Commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the department.

7.13(7) An AAA shall report the loss, theft, damage, spoilage, or infestation of commodities to the department within 5 working days to initiate claim action.

7.13(8) An AAA that receives cash in lieu of commodities shall spend all cash received from the AOA to purchase agricultural food items.

321—7.14(231) Nutrition performance standards.

7.14(1) Each meal served by the nutrition services provider, whether at a congregate meal site, home-delivered or elsewhere, must comply with the Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture, and provide to each participating elder:

a. A minimum of 33 1/3 percent of the RDA/AI as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, if the program provides one meal per day;

b. A minimum of 66 2/3 percent of the allowances if the program provides two meals per day; and

c. One hundred percent of the allowances if the program provides three meals per day.

7.14(2) AAA shall ensure that the areawide percentage of residents with the greatest economic and social need is proportionately represented in the characteristics of individuals served in the nutrition program as outlined in 321 IAC 6 for preference in service delivery.

321—7.15(231) Food standards. The AAA or contractor shall, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

7.15(1) Each AAA shall establish and implement written procedures, in consultation with a licensed dietitian, on handling foods prepared for a meal but not served. The procedures shall address which foods may be saved, which foods need to be destroyed, and instructions on cooling and storing foods for reuse.

7.15(2) All raw fruits and vegetables and other foods utilized shall be free from spoilage, filth or contamination and must be safe for human consumption.

7.15(3) Foods prepared, canned or preserved noncommercially shall not be used.

7.15(4) Standardized tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable nutrient quality and quantity of meals.

321—7.16(231) Food-borne illness. The AAA shall develop written procedures for handling suspected cases of food-borne illnesses. The contractor shall report the occurrence or suspected occurrence of a food-borne illness to the AAA within 12 hours. The AAA shall notify the department within 12 hours after the AAA becomes aware of the situation.

321—7.17(231) Menus.

7.17(1) All menus shall be planned for a minimum of four weeks, computer analyzed to ensure 33 1/3 percent of the RDA/AI is provided in each meal, certified in writing by the licensed dietitian whose services are utilized by the AAA, and submitted to the department for review at least two weeks prior to the initial use of the menu. For purposes of audit, AAA shall keep copies of the certified menus on file for a period of one year.

7.17(2) All certified menus shall be posted in a conspicuous location in each congregate meal site and regularly provided to home-delivered meal recipients. The certified menus may be modified occasionally if the provisions of rule 7.15(231) are maintained and a licensed dietitian or nutrition director is consulted prior to the change.

321—7.18(231) Special dietary needs. The AAA shall ensure that special dietary needs of program participants are met where feasible and appropriate, including the particular requirements arising from the health, religious, or ethnic backgrounds of eligible participants.

7.18(1) The following criteria shall be used to determine feasibility and appropriateness:

a. Sufficient numbers of elders who have special dietary needs exist to make the provision practical;

b. Skills and food necessary to provide the special menus are available.

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7.18(2) Special dietary and therapeutic menus must be planned under the supervision of a licensed dietitian in accordance with a current diet manual approved by the director and supplied to each AAA by the department. Certified menus must be submitted to the department at least two weeks prior to the initial use of the menus.

7.18(3) A written physician's order for each elder requesting a therapeutic diet shall be obtained prior to the elder's receipt of the meal and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician.

321—7.19(231) Congregate nutrition services. In providing nutrition services or in making awards for congregate nutrition services, the AAA shall:

1. Select and designate as a site any location where meals are served in a group setting with federal AOA nutrition funds or contributions from an AOA federal nutrition program, or both;

2. Provide a site in as close proximity to the majority of eligible individuals' residences as feasible, preferably within walking distance, and where transportation is available;

3. Provide for hot or other appropriate meals at least once a day, five or more days a week. In a county where there is a site providing meals five or more days a week, additional sites may be established which provide meals one or more days a week. Efforts shall be made and documented to the department annually to increase the number of serving days to a minimum of three days each week;

4. Coordinate with other community providers to arrange meals for elders on holidays that occur on regularly scheduled serving days and also to the general public in weather- and disaster-related emergencies, where feasible.

321—7.20(231) Eligibility for meals at congregate nutrition sites.

7.20(1) A person aged 60 or older and the spouse of the person, regardless of age, are eligible to participate in congregate nutrition services.

7.20(2) Individuals providing volunteer services during meal hours are eligible to participate in congregate nutrition services.

7.20(3) Individuals with disabilities who reside at home or reside with and accompany eligible elders are eligible to participate in congregate nutrition services.

7.20(4) Individuals with disabilities who are not 60 years of age or older and who reside in housing facilities occupied primarily by elders at which congregate nutrition services are provided are eligible to participate in congregate nutrition services.

7.20(5) Ineligible individuals may eat at a site and pay the programmatic cost of the meal, if the ineligible individual's receipt of the meal does not deprive an eligible participant of a meal.

321—7.21(231) Home-delivered meals.

7.21(1) Eligibility. An elder who is homebound by reason of illness, incapacitating disability or other cause is eligible to receive home-delivered meals. Regardless of age or condition, the spouse of an elder may receive home-delivered meals if receipt of the meal is in the best interest of the homebound elder under criteria set by the AAA.

7.21(2) Individual assessment. The AAA or the home-delivered meals contractor, subject to AAA approval, shall establish and utilize procedures for the determination of an elder's eligibility for home-delivered meals, including specific criteria for:

a. Initial and subsequent six-month assessments of the elder's eligibility;

b. Determination of the number of days per week the elder has a need for home-delivered meals; and

c. Determination of the elder's need for other home-delivered nutrition services.

7.21(3) Requirements for providers. The AAA or contractor shall:

a. Provide for home-delivered meals at least once a day, five or more days a week;

b. Provide for home-delivered meals to participants according to the frequency of need determined by procedures required in subrule 7.21(2). Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life;

c. Make arrangements for the availability of meals to elders in weather- and disaster-related emergencies, where feasible;

d. Provide other nutrition and supportive services either directly or through referral to meet the need of the homebound elder;

e. Provide monthly nutrition education for home-delivered meal recipients, to include safe food handling of the delivered meals every six months;

f. With the consent of the elder or the elder's representative, bring to the attention of appropriate officials for follow up conditions or circumstances which place the elder or the household in imminent danger. The AAA shall coordinate with other agencies to provide services to the homebound elder to reduce dependency and cultural, social and geographic isolation caused by noneconomic factors.

The provider is not required to provide meals more than five days per week, but is encouraged to do so.

321—7.22(231) Noncompliance. When a grantee fails to meet the nutrition requirements as provided in this chapter, the department shall follow procedures outlined in 321 IAC 4.

321—7.23(231) Requirements for opening or closing congregate nutrition sites. The AAA shall notify the department in writing at least 30 days prior to the AAA's opening, relocating, or terminating a nutrition site. The notification must include:

1. Reasons for the action;

2. Impact on eligible individuals;

3. Impact on nearby meal sites; and

4. Impact on provision of nutrition-related services.

321—7.24(231) Evaluation of sites. The AAA shall conduct on-site evaluations on an annual basis. The reports of these evaluations shall be kept on file for three years and shall include any areas that need additional monitoring or corrective actions.

7.24(1) At a minimum, the evaluation shall include the site's compliance with:

a. Food acquisition, handling and safety standards;

b. The requirement for the RDA/AI as established in this chapter;

c. Food quality and acceptability (appearance, taste, temperature and smell);

d. Services provided in addition to meals, such as nutrition education and counseling as appropriate, social opportunities and other activities.

7.24(2) The AAA shall provide each site a tool to guide food service personnel in a self-assessment to be conducted at midpoint between AAA on-site evaluations. This evaluation shall be conducted to document program compliance

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and to analyze areas for ongoing monitoring. The self-assessment reports shall be kept on file for three years.

321—7.25(231) Family caregiver program under Title III-E of the Act.

7.25(1) Title III-E funding. AAA shall utilize the funding received through Title III-E for providing any of the following services for family caregivers and grandparents or elders who are relative caregivers:

- a. Support services;
- b. Information about available services;
- c. Assistance in gaining access to services;
- d. Individual counseling, organization of support groups, training to assist in making decisions and solving problems related to the roles of the family caregivers and grandparents or elders who are relative caregivers;
- e. Respite care to enable the family caregivers and grandparents or elders who are relative caregivers to be temporarily relieved from their caregiving responsibilities; and
- f. Supplemental services, on a limited basis, to complete the care provided.

7.25(2) Priorities of services. In providing services under this program, the AAA shall give priority to elders with greatest social and economic need, with particular attention to low-income elders and elders providing care and support to persons with mental retardation and related developmental disabilities (as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001)).

7.25(3) Other community agencies and voluntary organizations. The AAA and AAA contractors shall coordinate activities with other community agencies and voluntary organizations providing the types of services described in subrule 7.25(1).

7.25(4) Reporting. The AAA shall record all services and submit all fiscal and performance reports for this program in accordance with the IAPI issued by the department.

7.25(5) Noncompliance. When the AAA fails to meet the performance standards, the department shall follow procedures outlined in 321 IAC 4.

These rules are intended to implement Iowa Code chapter 231.

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**ELDER AFFAIRS
DEPARTMENT[321]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 10, "Senior Internship Program (SIP)," Iowa Administrative Code.

Definitions related to the Senior Internship Program have been moved from Chapter 1 to Chapter 10. No changes are proposed to these definitions or to any other part of Chapter 10.

Any interested person may make written suggestions or comments on these proposed amendments before 4 p.m. on January 6, 2006. Such written comments should be directed to the Iowa Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515) 242-3300.

These amendments are intended to implement Iowa Code chapter 231.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

Re-number rules **321—10.2(231)** to **321—10.6(231)** as **321—10.3(231)** to **321—10.7(231)** and adopt the following **new** rule 321—10.2(231):

321—10.2(231) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

"Assessment of job skills" means a process by which the senior internship program coordinator develops a written history of the work experience and related qualities that an individual possesses that would make the individual marketable as an employee.

"Authorized position" means an enrollment opportunity allocated by the department during a program year.

"Eligible individual" means a person who is 55 years of age or older who meets income guidelines published by the United States Department of Labor.

"Equitable distribution" means the ratio of the total authorized positions operated by the department and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

"Host agency" means a public agency or private nonprofit organization, or private sector employer, other than a political party, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, which provides a work site and supervision for an enrollee.

"Individual development plan" or "IDP" means the plan developed in partnership with the enrollee to reflect the needs of the enrollee as indicated by the assessment, as well as the expressed interests and desires of the enrollee.

"Low income" (SIP) means any person or persons whose actual individual or family income is not more than 125 percent of the poverty guidelines issued annually by the U.S. Department of Labor in accordance with Section 507(2) of the Older Americans Act.

"National sponsor" means Experience Works, AARP, Senior Services of America, Inc., or any other national organization which is allocated positions by the United States Department of Labor.

"One-stop delivery system" means a workforce system connecting employment, education, and training services into a coherent network of resources at the local, state, and national levels.

"Physical examination" means a medical examination performed by a physician or a medical professional under the supervision of a physician to determine if the enrollee is capable of fulfilling the duties of a work assignment.

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“Physical examination waiver” means a signed statement by an enrollee or applicant which verifies that the enrollee or applicant was offered the opportunity to take a physical examination, but refused to take it.

“Quarterly progress report” means the report on enrollee activity and characteristics submitted to the U.S. Department of Labor from information gathered from the subprojects at the end of every three-month period during the fiscal year.

“Senior internship program” or “SIP” means the program established under Iowa Code section 231.52.

“Senior internship program coordinator” means a person employed by the subproject sponsor whose responsibility it is to develop jobs, advocate for the employment of eligible individuals and provide employment services for eligible individuals, including Title V enrollees.

“Subproject sponsor” means an organization which has entered into a subproject agreement or contract with a project sponsor.

“Temporary position” means the authorized positions which exceed the number allocated by the U.S. Department of Labor.

“Termination” means a separation from the program.

“Title V” means that portion of the federal Act with that designation.

“Unsubsidized employment” means a position where wages, fringes and other expenses for a terminated enrollee are not paid with SIP funds.

“Workforce Investment Act of 1998” means the law providing the framework for a national workforce preparation and employment system designed to meet both the needs of the nation’s businesses and the needs of job seekers and those who want to further their careers.

“Work site” means the actual location where enrollees perform their duties.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 231.14 and 235B.16, the Elder Affairs Department hereby gives Notice of Intended Action to adopt a new Chapter 12, “Elder Abuse, Neglect or Exploitation Prevention and Awareness,” Iowa Administrative Code.

This chapter establishes methods to increase awareness of elder abuse, neglect or exploitation among service providers, health care professionals, county attorneys, law enforcement, community change agents and the general public as provided in Iowa Code chapter 235B. The chapter implements the program by authorizing the Department of Elder Affairs to develop and maintain a mandatory reporter training manual and to certify trainers.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd

Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

These rules are intended to implement Iowa Code chapter 231 and section 235B.16.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following **new** chapter is proposed.

CHAPTER 12

ELDER ABUSE, NEGLECT OR EXPLOITATION PREVENTION AND AWARENESS

321—12.1(231) Authority. This chapter implements the program for the prevention and awareness of elder abuse, neglect, or exploitation as provided in Iowa Code chapter 235B.

321—12.2(231) Purpose. This chapter establishes methods to increase the awareness of elder abuse, neglect, or exploitation among providers, health care professionals, county attorneys, law enforcement, community change agents and the general public.

321—12.3(231) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“Exploitation” means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

“Physical harm” means bodily injury, impairment, or disease.

321—12.4(231) Funding. Funding is provided by Title VII of the federal Act as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders.

321—12.5(231,235B) Training.

12.5(1) In accordance with Iowa Code section 235B.16(2), the department shall develop and maintain a dependent adult abuse mandatory reporter training manual. The curriculum shall comply with the specifications of the department of public health’s abuse education review panel as provided in 641 IAC 93.

12.5(2) The department shall instruct and certify trainers to deliver the DEA dependent adult abuse mandatory reporter training approved curriculum.

12.5(3) The instruction shall include, but is not limited to, laws, rules and regulations relating to all forms of dependent adult abuse and reporting requirements.

12.5(4) Prior to an individual’s conducting mandatory reporter training with the DEA curriculum, that person must become a certified trainer by completing the required training from the DEA.

12.5(5) The trainer’s certification shall be valid for three years from the date of issuance and must be renewed by retaking the instruction.

12.5(6) DEA may revoke a trainer’s certification for non-compliance with the training requirements. Such a revocation would occur only after a written warning.

12.5(7) It is the responsibility of certified trainers to keep the department notified of changes in contact information, such as address, E-mail, and telephone number. Certified trainers are also responsible for checking the department’s

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Web site for updates to the curriculum. Updates shall be posted on the department's Web site no later than July 1.

These rules are intended to implement Iowa Code chapter 231 and section 235B.16.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 15, "Elderly Services Program," and adopt a new Chapter 15, "Elder Abuse Initiative, Emergency Shelter and Support Services Projects," Iowa Administrative Code.

This chapter applies to the elder abuse initiative, emergency shelter and support services projects as authorized by Iowa Code sections 231.56A and 235B.1. This chapter covers the funding, eligibility and application process for a program of emergency shelter and support services created through partnerships with Area Agencies on Aging, the Department of Human Services, local and state law enforcement officials, care providers and other persons or entities with responsibilities for Iowa's elders.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

This amendment is intended to implement Iowa Code chapters 231, 235B and 249H.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 15 and adopt the following **new** chapter:

CHAPTER 15

ELDER ABUSE INITIATIVE, EMERGENCY SHELTER AND SUPPORT SERVICES PROJECTS

321—15.1(231) Authority. The elder abuse initiative, emergency shelter and support services projects are authorized by Iowa Code section 231.56A.

321—15.2(231) Purpose. The purpose of these projects is to focus on the prevention, intervention, detection and reporting of elder abuse, neglect and exploitation by presenting elders with options to enhance their lifestyle choices.

321—15.3(231) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless context of the

rule indicates otherwise. The following definitions also apply to this chapter:

"Elder abuse initiative" or "EAI" means a service delivery system created through partnerships with the AAA, the department of human services, law enforcement, county attorneys, care providers and other stakeholders in the community for emergency shelter and support service.

"Exploitation" means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

"Physical harm" means bodily injury, impairment, or disease.

"Request for proposal" or "RFP" means a document issued by the department, in accordance with Iowa Code section 8.47 and 11 IAC 105, 106 and 107, detailing the process for submitting an application for designation as a new or expanded EAI project and the criteria for qualification.

321—15.4(231,249H) Funding. Funding is provided by the senior living trust fund created in Iowa Code chapter 249H as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders. Requirements of Iowa Code section 231.56A(5) and (6) apply to funds awarded for EAI projects.

321—15.5(231) Eligibility.

15.5(1) Only applicants that meet the requirements of Iowa Code section 231.56A may apply for designation as EAI projects.

15.5(2) A qualified AAA may apply to the department for a new EAI for one or more counties within the AAA's boundaries with funding, or may apply to expand an existing EAI into one or more counties within the AAA boundaries with or without funding as specified in the RFP issued by the department.

15.5(3) Project activities including, but not limited to, public education and the dissemination of information may supplement prior activities.

15.5(4) AAA shall implement the activities in coordination with local groups, individuals and agencies, such as the department of human services' multidisciplinary committee.

321—15.6(231) Application process.

15.6(1) In a fiscal year in which funding is available, the department shall release, by July 1, an RFP detailing the application requirements, type of EAI requested and the criteria for qualification for new projects or expansion counties. The criteria shall include compliance with Iowa Code section 231.56A(3). The EAI designation and funding are awarded based on these criteria and those established in the RFP.

15.6(2) AAA that seek to initiate a new EAI or expand their current EAI service beyond that designated in the current contract may make application to the department as specified in the RFP.

15.6(3) All application materials shall be reviewed by the department and, if appropriate, a recommendation for approval made to the commission based on the completeness of the application and the apparent ability to meet the criteria established in the Iowa Code and the RFP.

15.6(4) Upon commission approval of the department recommendation, the successful applicant shall enter into a contract with the department which delineates the responsibilities of each party.

321—15.7(231) Reporting and monitoring. Monitoring and submission of fiscal and program reports shall be in ac-

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cordance with the terms of the current contract as well as the requirements of this chapter.

These rules are intended to implement Iowa Code chapters 231, 235B and 249H.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 16, "Senior Living Coordinating Unit," Iowa Administrative Code.

The definition of and references to the Community-Based Adult Services Committee have been deleted due to use of diverse ad hoc workgroups, as needed, to provide recommendations and reports to the Senior Living Coordinating Unit. The duties of the chairperson and vice chairperson have been changed to reflect current practice.

Any interested person may make written suggestions or comments on these proposed amendments before 4 p.m. on January 6, 2006. Such written comments should be directed to the Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515)242-3300.

These amendments are intended to implement Iowa Code chapters 21, 231 and 249H.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

Amend **321—Chapter 16** as follows:

CHAPTER 16 SENIOR LIVING COORDINATING UNIT

321—16.1(231,249H) Definitions. *Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definition also applies to this chapter:*

"Community-based adult services committee" or "CBAS committee" means the group that makes recommendations to the senior living coordinating unit and consists of representatives appointed by the departments of elder affairs, human services, inspections and appeals, and public health; Iowa Foundation for Medical Care, Iowa Association of Area Agencies on Aging, and Iowa State Association of Counties.

"Unit" means the senior living coordinating unit established in Iowa Code section 231.58.

321—16.2(231,249H) Organization of the unit and proceedings.

16.2(1) The senior living coordinating unit is created within the department of elder affairs by *Iowa Code section 231.58.*

16.2(2) The director of the department of elder affairs shall serve as chairperson.

16.2(3) The voting members of the unit shall elect a vice-chairperson from its membership at the first meeting following July 1 of each year.

16.2(4) Four voting members of the unit constitute a quorum.

16.2(5) The unit shall be governed in accordance with Iowa Code chapter 21, and the unit's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

16.2(6) The technical and administrative functions of the unit shall be performed by staff of the department of elder affairs.

~~**16.2(7)** The community-based adult services committee shall serve as the work group to the unit regarding policies and programs.~~

321—16.3(231,249H) Chairperson and vice-chairperson duties.

16.3(1) The chairperson's duties include:

a. Ensuring that tentative agendas for meetings are prepared and distributed;

b. Ensuring that all notices to the public required by Iowa Code section 21.4 are given;

c. Convening and chairing unit meetings;

d. Ensuring that unit proceedings are recorded; and

e. Ensuring that minutes of meetings are prepared and distributed; .

~~*d. Ensuring that tentative agendas for meetings are prepared and distributed; and*~~

~~*e. Ensuring that all notices to the public required by Iowa Code section 21.4 are given.*~~

16.3(2) The vice-chairperson shall assume the chairperson's duties in the chairperson's absence.

321—16.4(21,231,249H) Meetings. The unit shall meet at least a *minimum* of six times a year. Meeting dates shall be set by members of the unit at the first meeting following July 1 of each year. The chairperson may call a special meeting upon five days' notice.

321—16.5(231,249H) Communications. Communications to the unit may be addressed to the Department of Elder Affairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309-3609 *Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, IA 50319.*

These rules are intended to implement Iowa Code chapters 21, 231 and 249H.

ARC 4669B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Action to rescind Chapter 28, "Iowa Senior Living Program—Home- and Community-Based Services for Seniors," Iowa Administrative Code, and adopt a new Chapter 28 with the same title.

The new chapter has been reorganized and rephrased to follow Iowa Code requirements and procedures. Some text has been moved to Chapter 5. A definition of "home- and community-based services" has been added. The definition of "rural" has been changed to correspond to the Older Americans Act. Reporting requirements have been clarified.

Any interested person may make written suggestions or comments on this proposed amendment before 4 p.m. on January 6, 2006. Such written comments should be directed to the Iowa Department of Elder Affairs, Clemens Building, 3rd Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609; or E-mailed to sherry.james@iowa.gov; or faxed to (515) 242-3300.

This amendment is intended to implement Iowa Code chapters 231 and 249H.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 321—Chapter 28 and adopt the following **new** chapter:

CHAPTER 28

IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

321—28.1(231,249H) Purpose. The purpose of the Iowa senior living program, home- and community-based services for seniors, is to create a balanced, comprehensive and affordable long-term care system that is consumer-directed, provides a balance between institutional and noninstitutional services and contributes to the quality of the lives of Iowans.

321—28.2(231,249H) Use of funds. Funds appropriated from the senior living trust fund for home- and community-based services for seniors shall be used for activities related to the design, maintenance, or expansion of home- and community-based services for low- and moderate-income seniors including, but not limited to, adult day, personal care, respite, homemaker, chore, and transportation services which promote the independence of seniors and delay the use of institutional care by seniors with low and moderate incomes.

321—28.3(231,249H) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

"Client participation" means a payment system with an established fee or cost that allows:

1. A senior with low income to receive services for a voluntary contribution toward the cost of the service;
2. A senior with moderate income to receive services at less than the full service delivery cost; and
3. A senior with above moderate income to purchase services at full cost.

"Contract" means the purchase of units of services on behalf of an aggregate clientele.

"Direct service" means a service to a client that is administered by the area agency on aging and provided by employees of the area agency on aging.

"Grant" means the use of funds to underwrite an operation to support the existence of a specific service provider.

"Income" means wages, salaries, business income, social security benefits, veteran's administration benefits, disability payments, retirement or pension plan income, annuity income, interest income, supplemental security income, welfare payments, and other cash income.

"Long-term care services" means those services specified under the medical assistance home- and community-based services waiver for the elderly or the National Aging Program Information System (NAPIS), which are designed to directly promote the independence of seniors and to delay the use of institutional care by seniors with low and moderate incomes.

"Low income" means:

1. For purposes of determining client eligibility for financial assistance under Iowa Code section 249H.7, household income of less than 300 percent of SSI;

2. For purposes of funding distribution under Iowa Code chapter 249H, household income at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"Medical assistance program" means the financial assistance programs established in cooperation between the state of Iowa and the Centers for Medicare and Medicaid Services (CMS) under the Medicaid state plan for lower-income Iowans with health and social needs.

"Moderate income" means income that is equal to or greater than 300 percent of SSI and less than 300 percent of the federal poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"Provider" means individual(s), agency(ies), public and private for-profit and not-for-profit organization(s) or other entity(ies) delivering long-term care services funded under these rules.

"Senior" or "elder" means an individual who is 60 years of age or older.

"Senior living program" means the senior living program created in Iowa Code chapter 249H to provide for long-term care alternative services, long-term care service development, and nursing facility conversion.

"Senior living trust fund(s)" or "SLTF" means the funding mechanism established in Iowa Code chapter 249H.

"Subcontractor of the area agencies on aging" means a provider receiving funds by contract with an area agency on aging.

"Supplemental security income (SSI)" means the income level defined each year by the Social Security Administration (SSA) for the nationwide federal assistance program administered by SSA, which guarantees the defined minimum level of income for needy aged, blind, or disabled individuals by providing basic cash support.

"Underserved" means:

1. For service funding purposes, individuals aged 60 and over who are unable to access needed services; or
2. Areas where the service identified as needed is not available because there is no provider for that service; or
3. Existing providers of that service are regularly unable to deliver the amount of service needed.

"Voucher" means the mechanism used to purchase a specific service from a vendor on behalf of an individual client or clients.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—28.4(231,249H) Disbursement of funds.

28.4(1) Administration. The department may use up to 7 percent of the service dollars appropriated to the department from the SLTF for purposes of implementing and administering the functions delegated to the department by Iowa Code chapter 249H.

28.4(2) Identification of service needs.

a. The department, in collaboration with the area agencies on aging, shall conduct, on a four-year cycle, a statewide needs assessment designed to identify individuals aged 60 and over as underserved.

b. In addition to the funds given in 28.4(1), the department may withhold up to \$100,000 for each four-year cycle from the service dollars appropriated to the department from the SLTF to conduct a statewide needs assessment.

c. The department shall seek partners and other funding sources to share the cost of implementing the survey.

28.4(3) Process for disbursement of funds to AAA. The process for disbursement of funds to AAA shall be incorporated into the area plan process outlined in the OAA.

321—28.5(231,249H) Eligible use of funds.

28.5(1) AAA may use up to 7 percent of the service dollars for purposes of developing, implementing and administering local long-term care services and for collecting and reporting required data.

28.5(2) The funds distributed to the AAA by the department from the senior living trust fund shall be used to:

a. Provide services to low- and moderate-income Iowans aged 60 and over;

b. Provide long-term care services to enhance the ability of seniors to appropriately avoid or delay institutionalization;

c. Provide services through:

(1) Enhancement and expansion of existing providers to serve new seniors;

(2) Provision of new units of service to existing seniors and new areas;

(3) Identification and development of new providers; and

(4) Addition of new funding sources to maintain current service levels when service levels would otherwise decline due to loss of purchasing power.

321—28.6(231,249H) Client participation. The AAA may use client participation for services funded under Iowa Code chapter 249H. When client participation is used:

28.6(1) Eligibility shall be based on self-declaration by the client or declaration on the client's behalf by the client's legal representative. If the provider or AAA has reason to believe that the declaration is inaccurate or misrepresents the client's financial status, the provider or AAA may require documentation of income and resources and subsequently may discontinue further financial assistance from the senior living trust fund if the individual is found ineligible.

28.6(2) Funds generated through client participation must be used by the AAA or contracted service provider to purchase the respective service for which the funds were received.

321—28.7(231,249H) Reallocation of unobligated funds.

28.7(1) If the department determines prior to the end of the fiscal year that an AAA will have unused funds, the department may reallocate the unused funds to one or more AAA in accordance with demonstrated utilization or by a reallocation method specified by IAPI. The AAA receiving these funds shall obligate them by the end of the fiscal year in which they are reallocated.

28.7(2) Any unobligated funds remaining at the end of the state fiscal year shall be returned to the department and deposited in the Iowa senior living trust fund.

321—28.8(231,249H) Prohibited use of senior living trust fund moneys. SLTF moneys shall be not be used to:

1. Fund the same service category when providing direct service.

2. Contract Older Americans Act funds and senior living trust funds to a provider for the same service category.

3. Purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

4. Replace existing funding for a long-term care service. The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for seniors and results in an increase in total AAA funding for long-term care services to seniors equal to the SLTF dollars used for replacement.

321—28.9(231,249H) Disbursement of SLTF funds to AAA subcontractors.

28.9(1) Use of SLTF funding by subcontractors.

a. Funds contracted by an AAA from the SLTF shall be used to provide long-term care services to enhance the ability of Iowans aged 60 and over with low or moderate income to appropriately avoid or delay institutionalization.

b. An AAA subcontractor may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

c. The AAA subcontractor shall not use senior living trust funds to replace existing funding for a long-term care service. The AAA may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the subcontractor to another long-term care service for the elderly and results in an increase in total funding for long-term care services by the subcontractor to seniors that is equal to the senior living trust fund dollars used for replacement.

28.9(2) Prioritization of service contracts. The AAA may prioritize service contracts and funding levels by applying criteria that include, but are not limited to, the following:

a. Local priorities in order to fulfill unmet needs.

b. The provider's commitment to obtain or provide matching funds.

c. Provider commitment to use client participation.

d. Cost.

e. The provider's history of providing quality service.

28.9(3) Criteria to receive funds as a subcontractor of an AAA.

a. The applicant for senior living trust funds must demonstrate that the proposed long-term care alternative service(s):

(1) Will be responsive to the service priorities identified by the AAA; or

(2) Will address other significant unmet service needs of eligible seniors as documented by the applicant.

b. The applicant must document the ability to provide the proposed services and the related administration, financial tracking and reporting required by a subcontractor under these rules.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

c. The subcontractor must agree to meet the criteria set out in this subrule in addition to criteria established by the AAA in its request for proposal and contract.

d. The subcontractor shall ensure that all employees providing in-home care to clients have had a dependent adult abuse and criminal history background check and have been cleared for said functions in accordance with Iowa Code section 135C.33.

e. Senior living trust funds shall not be contracted to a provider that has been prohibited from participating in the Medicare or medical assistance programs.

f. The subcontractor shall commit to seeking third-party reimbursement when available.

28.9(4) Disbursements of funds to AAA subcontractors.

a. Method. AAA may use the method or methods of disbursing funds determined to best ensure effective provision of services that will address documented unmet needs, including contracts, grants, vouchers and direct services.

(1) Provider applications shall be due at the respective AAA office by the date given in the request for proposal for review and possible approval by the AAA.

(2) Funds shall be disbursed by the AAA following the receipt of funds from the department.

b. For subsequent state fiscal years, SLTF service dollars appropriated under Iowa Code section 249H.7 shall be disbursed to subcontractors through the area plan process as described in 321 IAC 5.

321—28.10(231,249H) Reporting requirements.

28.10(1) AAA subcontractors.

a. Area agency on aging subcontractors shall submit monthly reports to the area agency on aging based upon reporting forms that are available from the AAA.

b. Subcontractor monthly reports, excepting those submitted by legal services providers, shall provide data for the previous month and by year-to-date for:

(1) Total number of clients served; and

(2) For each client receiving financial assistance from senior living trust funds, the report must be by service category, the number of units of service provided, the number of units of service not provided, the reasons services were not provided, and expenditures.

c. Subcontractors shall provide other information as requested by the AAA.

d. Subcontractors, excepting legal services providers, shall participate in the NAPIS client registration process.

e. Subcontractors providing legal services shall report in aggregate:

(1) Unduplicated count of clients served;

(2) The number of units of service provided;

(3) The number of units of service not provided;

(4) The reasons services were not provided; and

(5) Expenditures.

28.10(2) Area agencies on aging.

a. Area agencies on aging shall, at a minimum, submit monthly reports to the department, as specified by the department in one or more IAPIs governing reporting requirements.

b. Each AAA shall use the NAPIS client registration process for clients receiving HCBS senior living assistance, with the exception of clients receiving legal assistance.

These rules are intended to implement Iowa Code chapters 231 and 249H.

ARC 4658B

**HUMAN SERVICES
DEPARTMENT[441]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments would change the Medicaid requirements for verification of pregnancy to allow the Department to accept a woman’s declaration of pregnancy and the probable date of conception, instead of requiring written verification by a health professional. Written verification continues to be required in multiple pregnancies if more than one fetus is to be considered in the household size.

Obtaining written verification may pose a barrier to a pregnant woman’s access to prenatal care, since it can be difficult for an uninsured woman to schedule an appointment for the necessary examination. Because early access to prenatal care is related to positive birth outcomes, it is in the public interest to encourage early access, both in terms of public health and in reduction of public expenditures associated with poor birth outcomes.

These amendments make the following technical changes:

- Clarify that a woman who withdraws her Medicaid application is still eligible for services provided during the presumptive period (the initial month and the following month).

- Remove unnecessary wording in rules on how income is counted in the Family Medical Assistance Program.

These amendments do not provide for waivers in specified situations because they remove a restriction on applicants or make technical changes.

Any interested person may make written comments on the proposed amendments on or before December 14, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(30) as follows:

Amend the introductory paragraph and the first unnumbered paragraph as follows:

75.1(30) Presumptive eligibility for pregnant women. A pregnant woman who is determined by a qualified provider to be presumptively eligible for Medicaid, based only on her statements regarding family income, shall be eligible for ambulatory prenatal care. *Eligibility shall continue* until the last day of the month following the month of the presumptive eli-

HUMAN SERVICES DEPARTMENT[441](cont'd)

gibility determination unless the pregnant woman is determined to be ineligible for Medicaid during this period based on a Medicaid application filed either ~~prior to~~ *before* the presumptive eligibility determination or during this period. In this case, presumptive eligibility shall end on the date Medicaid ineligibility is determined. *A pregnant woman who files a Medicaid application but withdraws that application before eligibility is determined has not been determined ineligible for Medicaid.* The pregnant woman shall complete Form 470-2927, Health Services Application, in order for the qualified provider to make the presumptive eligibility determination. The qualified provider shall complete Form 470-2629, *Presumptive Medicaid Income Calculation Worksheet for Presumptive Medicaid Eligibility Determinations*, in order to establish that the pregnant woman's family income is within the prescribed limits of the Medicaid program.

If the pregnant woman files a Medicaid application in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination, Medicaid shall continue until a decision of *ineligibility* is made on the application. Payment of claims for ambulatory prenatal care services provided to a pregnant woman under this subrule is not dependent upon a finding of Medicaid eligibility for the pregnant woman.

ITEM 2. Amend rule 441—75.17(249A) as follows:

441—75.17(249A) Verification of pregnancy. For the purpose of establishing Medicaid eligibility for pregnant women under this chapter, ~~a signed statement from a maternal health center, family planning agency, physician's office, physician-directed qualifying provider, or advanced registered nurse practitioner~~ *the applicant's self-declaration of the pregnancy and the date of conception* shall serve as verification of pregnancy, *unless questionable.*

~~75.17(1) Multiple pregnancy. Additionally, the number of fetuses shall be verified if more than one exists, and the probable date of conception shall be established when necessary to determine eligibility. If the pregnant woman claims to be carrying more than one fetus, a medical professional who has examined the woman must verify the number of fetuses in order for more than one to be considered in the household size.~~

75.17(2) Cost of examination. When an examination is required and other medical resources are not available to meet the expense of the examination, the provider shall be authorized to make the examination and submit the claim for payment.

This rule is intended to implement Iowa Code section 249A.3.

ITEM 3. Amend rule 441—75.57(249A) as follows:

Amend subrule **75.57(2)**, paragraph "**b**," by adopting **new** subparagraph (2) as follows:

(2) If both parents are in the home, adult or child care expenses shall not be allowed when one parent is unemployed and is physically and mentally able to provide the care.

Amend subrule **75.57(6)**, paragraph "**t**," as follows:

t. Any income restricted by law or regulation which is paid to a representative payee, living outside the home, ~~other than a parent who is the applicant or recipient~~, unless the income is actually made available to the applicant or recipient by the representative payee.

Amend subrule **75.57(7)** by rescinding the unnumbered paragraph following paragraph "**aa**."

ARC 4670B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Barber Examiners hereby gives Notice of Intended Action to amend Chapter 21, "Licensure of Barbers," Chapter 25, "Discipline for Barbers, Barber Instructors, Barbershops and Barber Schools," and Chapter 26, "Fees," Iowa Administrative Code.

These proposed amendments rescind rule 645—26.1(147, 158) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and provide other services for licensees, such as online renewals. The Board prenoticed these amendments to provide licensees and the public an opportunity to comment on the proposed amendments. The Board did not receive any comments during this prenotice period. In addition, the proposed amendments to Chapters 21 and 25 remove references to a lapsed license and provide a barber whose license had been on inactive status the opportunity to reactivate the license without retaking the examination.

Any interested person may make written comments on the proposed amendments on or before December 13, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on December 13, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 158 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **21.16(3)**, paragraph "**a**," subparagraph (2), as follows:

(2) Verification of completion of eight hours of continuing education within two years of application for reactivation. *An individual whose license was on inactive status prior to September 21, 2005, may reactivate the license between September 21, 2005, and June 30, 2007, by furnishing evidence of current full-time practice in another state of the United States or District of Columbia and completion of substantially equivalent continuing education.*

ITEM 2. Amend subrule **21.16(3)**, paragraph "**b**," subparagraph (3), as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(3) Verification of passing the state examination administered by the board within one year immediately prior to reactivation if the applicant does not have a current license and has not been in active practice in the United States during the past five years. *An individual whose Iowa license was on inactive status for more than five years prior to September 21, 2005, may reactivate the license between September 21, 2005, and June 30, 2007, without passing the state examination administered by the board.*

ITEM 3. Amend subrule 25.2(26) as follows:

25.2(26) Representing oneself as a licensed barber or barber instructor when the person's license has been suspended or revoked, or when the person's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 4. Rescind rule 645—26.1(147,158) and adopt the following **new** rule in lieu thereof:

645—26.1(147,158) License fees. All fees are nonrefundable.

26.1(1) Licensure fee for an initial license to practice barbering, licensure by endorsement, licensure by reciprocity or an instructor's license is \$120.

26.1(2) Biennial renewal fee for a barber license or barber instructor license is \$60.

26.1(3) Temporary permit fee is \$12.

26.1(4) Examination fee is \$60.

26.1(5) Demonstrator permit fee is \$45 for the first day and \$12 for each day thereafter for which the permit is valid.

26.1(6) Barber school license fee is \$600.

26.1(7) Barber school annual renewal fee is \$300.

26.1(8) Barbershop license fee is \$72.

26.1(9) Biennial renewal fee for a barbershop license is \$72.

26.1(10) Late fee for failure to renew before expiration is \$60.

26.1(11) Reactivation fee for a barber license is \$120.

26.1(12) Reactivation fee for a barbershop license is \$132.

26.1(13) Reactivation fee for a barber school license is \$360.

26.1(14) Duplicate or reissued license certificate or wallet card fee is \$20.

26.1(15) Verification of license fee is \$20.

26.1(16) Returned check fee is \$25.

26.1(17) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 158.

ARC 4684B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 65, "Dis-

cipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons and Schools," Iowa Administrative Code.

The proposed amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Any interested person may make written comments on the proposed amendment no later than December 23, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on December 23, 2005, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 157 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 645—65.6(157) as follows:

645—65.6(157) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

65.6(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

65.6(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

65.6(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a re-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

quest for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

65.6(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

65.6(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

65.6(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

65.6(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4694B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

The proposed amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Any interested person may make written comments on the proposed amendment no later than January 3, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 3, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 645—304.5(147) as follows:

645—304.5(147) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

304.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

304.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

304.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

304.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

304.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

304.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

304.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4680B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes under Title XVI shall be 8 percent for the calendar year 2006 (0.7% per month). The Department shall also pay interest at the 8 percent rate on refunds.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 26, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 13, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of

Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 16, 2005.

This amendment is intended to implement Iowa Code section 421.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(25) Calendar year 2006. The interest rate upon all unpaid taxes which are due as of January 1, 2006, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2006. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2006. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2006.

ARC 4682B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

These rules are proposed as a result of 2005 Iowa Acts, House File 868.

Item 1 adopts new rule 701—42.24(15H,422), which provides for a wage-benefits tax credit for individual income tax.

Item 2 adopts new rule 701—52.25(15H,422), which provides for a wage-benefits tax credit for corporation income tax.

Item 3 adopts new rule 701—58.14(15H,422), which provides for a wage-benefits tax credit for franchise tax.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by

REVENUE DEPARTMENT[701](cont'd)

delivery or by mailing postmarked no later than December 27, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed rules on or before December 13, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 16, 2005.

These rules are intended to implement 2005 Iowa Acts, House File 868, sections 55 to 59, and Iowa Code chapter 422 as amended by 2005 Iowa Acts, House File 868, sections 60, 62 and 63.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following rules are proposed.

ITEM 1. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.24(15H,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

42.24(1) Definitions. The following definitions are applicable to this rule:

“Average county wage” means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“Benefits” means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

“Department” means the Iowa department of revenue.

“Full-time” means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently estab-

lished by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“Grow Iowa values fund” means the grow Iowa values fund created in 2005 Iowa Acts, House File 868, section 1.

“Nonqualified new job” means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

“Qualified new job” or “job creation” means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

“Retail business” means a business which sells its product directly to a consumer.

“Retained qualified new job” or “job retention” means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

“Service business” means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

42.24(2) Calculation of credit. A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

- a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.
- b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.
- c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.24(3) Application for the tax credit, tax credit certificate and amount of tax credit available.

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

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(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for a particular fiscal year, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit is eligible to receive the tax credit certificate for each of the four subsequent tax years if the business retains the qualified new job during each of these subsequent tax years. The business must reapply each year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.24(2) for the first year are applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs. Therefore, if a business received a tax credit for the first year in which the qualified job was created, the business will automatically receive a tax credit for a subsequent year as long as the qualified job is retained and an application is completed.

f. After the first fiscal year, if the \$10 million limit is reached, but credits become available because the jobs were not retained by other businesses, an application which was originally denied will be considered in the order in which it was originally received.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, House File 868, or moneys from the grow Iowa values fund.

42.24(4) Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ($\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new

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employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ($\$40,000 \times 5$ percent), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if all other applicants for tax credit certificates retained the qualified new jobs because the \$10 million limit has been met prior to this new application.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

This rule is intended to implement 2005 Iowa Acts, House File 868, sections 55 to 60.

ITEM 2. Amend 701—Chapter 52 by adopting the following new rule:

701—52.25(15H,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

52.25(1) Definitions. The following definitions are applicable to this rule:

“Average county wage” means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“Benefits” means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

“Department” means the Iowa department of revenue.

“Full-time” means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“Grow Iowa values fund” means the grow Iowa values fund created in 2005 Iowa Acts, House File 868, section 1.

“Nonqualified new job” means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

“Qualified new job” or “job creation” means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

“Retail business” means a business which sells its product directly to a consumer.

“Retained qualified new job” or “job retention” means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

“Service business” means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

52.25(2) Calculation of credit. A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

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a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.25(3) Application for the tax credit, tax credit certificate and amount of tax credit available.

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will

be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed \$10 million. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the \$10 million limit for a particular fiscal year, any applications for tax credit certificates received after the \$10 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the \$10 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit is eligible to receive the tax credit certificate for each of the four subsequent tax years if the business retains the qualified new job during each of these subsequent tax years. The business must reapply each year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.24(2) for the first year are applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs. Therefore, if a business received a tax credit for the first year in which the qualified job was created, the business will automatically receive a tax credit for a subsequent year as long as the qualified job is retained and an application is completed.

f. After the first fiscal year, if the \$10 million limit is reached, but credits become available because the jobs were not retained by other businesses, an application which was originally denied will be considered in the order in which it was originally received.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, House File 868, or moneys from the grow Iowa values fund.

52.25(4) Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa

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and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is \$11.86 per hour. If the average county wage per hour for Clayton County is \$11.95 for the fourth quarter of 2005, \$12.05 for the first quarter of 2006, and \$12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is \$12.00 per hour. This wage equates to an average annual wage of \$24,960 ($\$12.00 \times 40 \text{ hours} \times 52 \text{ weeks}$). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$32,448 (130 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling \$39,936 (160 percent of \$24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is \$13.75 per hour in Grundy County, this wage equates to an average county wage of \$28,600. The wages and benefits for each of these three new employees is \$40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of \$2,000 for each employee ($\$40,000 \times 5 \text{ percent}$), for a total wage-benefits tax credit of \$6,000. If Business E files on a calendar year basis, the \$6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess

of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months.

EXAMPLE 8: Assume the same facts as Example 6, except that the \$10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if all other applicants for tax credit certificates retained the qualified new jobs because the \$10 million limit has been met prior to this new application.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

This rule is intended to implement 2005 Iowa Acts, House File 868, sections 55 to 59, and Iowa Code section 422.33 as amended by 2005 Iowa Acts, House File 868, section 62.

ITEM 3. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.14(15H,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit, subject to the availability of the credit, equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for eligible financial institutions. For information on the eligibility for the wage-benefits tax credit, how to file applications for the wage-benefits tax credit, how the wage-benefits tax credit is computed, and other details about the credit, see rule 701—52.25(15H,422).

This rule is intended to implement 2005 Iowa Acts, House File 868, sections 55 to 59, and Iowa Code section 422.60 as amended by 2005 Iowa Acts, House File 868, section 63.

ARC 4681B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” and Chapter 58, “Filing Re-

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turns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

These rules are proposed as a result of 2004 Iowa Acts, Senate File 2298, and 2005 Iowa Acts, Senate File 390 and House File 882.

Item 1 adopts new rule 701—42.25(422,476B), which provides for a wind energy production tax credit for individual income tax.

Item 2 adopts new rule 701—42.26(422,476C), which provides for a renewable energy tax credit for individual income tax.

Item 3 adopts new rule 701—52.26(422,476B), which provides for a wind energy production tax credit for corporation income tax.

Item 4 adopts new rule 701—52.27(422,476C), which provides for a renewable energy tax credit for corporation income tax.

Item 5 adopts new rule 701—58.15(422,476B), which provides for a wind energy production tax credit for franchise tax.

Item 6 adopts new rule 701—58.16(422,476C), which provides for a renewable energy tax credit for franchise tax.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 27, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed rules on or before December 13, 2005. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 16, 2005.

These rules are intended to implement Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882; Iowa Code chapter 422 as amended by 2004 Iowa Acts, Senate File 2298; and 2005 Iowa Acts, Senate File 390.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following rules are proposed.

ITEM 1. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.25(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476,81GA,SF390,HF882).

42.25(1) Application and review process for the wind energy production tax credit. An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2008. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the utilities board will no longer be considered a qualified facility.

An owner of the qualified facility must apply to the utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The application must include the following information:

- a. A copy of the determination from the utilities board that the facility was approved.
- b. A copy of the executed power purchase agreement or other agreement to purchase electricity.
- c. Documentation that the electricity has been generated by the facility and sold to a purchaser.
- d. The date that the facility was placed in service.
- e. The number of kilowatt-hours of electricity generated and purchased from the facility during the tax year.
- f. The name, address, and tax identification number of the owner.
- g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.
- h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a tax credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

42.25(2) Computation of the credit. The wind energy production credit equals one cent multiplied by the number of

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kilowatt-hours of qualified electricity sold by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.25(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.25(3) Transfer of the wind energy production tax credit certificate. The wind energy production tax credit certificate may be transferred once to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30

days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882, sections 163 through 171.

ITEM 2. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.26(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.18(476,81GA,SF390,HF882).

42.26(1) Application and review process for the renewable energy tax credit. A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility or a solar energy conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2011.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 90 megawatts of nameplate generating capacity. The maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities and solar energy conversion facilities cannot exceed 10 megawatts of nameplate generating capacity. A facility that is not operational within 18 months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities.

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A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The application must include the following information:

a. A copy of the determination from the utilities board that the facility was approved.

b. A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or the purchaser of renewable energy will be eligible to apply for the renewable energy tax credit.

c. Documentation that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose has been generated by the facility and sold to a purchaser.

d. The date that the facility was placed in service.

e. The number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated and purchased from the facility during the tax period.

f. The name, address and tax identification number of the purchaser or producer.

g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.

h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

42.26(2) Computation of the credit. The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax year for which the credit will be claimed, the amount of the credit

and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2020.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.26(3) Transfer of the renewable energy tax credit certificate. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable

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income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and 2005 Iowa Acts, Senate File 390.

ITEM 3. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.26(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476,81GA,SF390,HF882).

52.26(1) Application and review process for the wind energy production tax credit. An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2008. In addition, the facility must also be approved by the board of supervisors of the county in which the facility is located. Once the owner receives the approval from the board of supervisors, approval is not required for subsequent tax periods.

The wind energy production tax credit cannot be allowed for a facility for which the owner has claimed an exemption from property tax under Iowa Code section 427B.26 or 441.21(8) or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with rule 701—80.13(427B).

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 450 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the utilities board will no longer be considered a qualified facility.

An owner of the qualified facility must apply to the utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The application must include the following information:

- a. A copy of the determination from the utilities board that the facility was approved.
- b. A copy of the executed power purchase agreement or other agreement to purchase electricity.
- c. Documentation that the electricity has been generated by the facility and sold to a purchaser.
- d. The date that the facility was placed in service.
- e. The number of kilowatt-hours of electricity generated and purchased from the facility during the tax year.
- f. The name, address, and tax identification number of the owner.
- g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.

h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a tax credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

52.26(2) Computation of the credit. The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax year set forth on

REVENUE DEPARTMENT[701](cont'd)

the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.26(3) Transfer of the wind energy production tax credit certificate. The wind energy production tax credit certificate may be transferred once to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882, sections 163 through 171.

ITEM 4. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.27(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.18(476,81GA,SF390,HF882).

52.27(1) Application and review process for the renewable energy tax credit. A producer or purchaser of a renewable energy facility must be approved by the Iowa utilities board in order to qualify for the renewable energy credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility or a solar energy conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2011.

The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 90 megawatts of nameplate generating capacity. The maximum

amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities and solar energy conversion facilities cannot exceed 10 megawatts of nameplate generating capacity. A facility that is not operational within 18 months after issuance of approval from the utilities board will no longer be considered a qualified facility. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities.

A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The application must include the following information:

a. A copy of the determination from the utilities board that the facility was approved.

b. A copy of the power purchase agreement or other agreement to purchase from the facility electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose. The agreement shall designate whether the producer or the purchaser of renewable energy will be eligible to apply for the renewable energy tax credit.

c. Documentation that the electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose has been generated by the facility and sold to a purchaser.

d. The date that the facility was placed in service.

e. The number of kilowatt-hours of electricity, standard cubic feet of hydrogen fuel, British thermal units of methane gas or other biogas used to generate electricity, or British thermal units of heat for a commercial purpose generated and purchased from the facility during the tax period.

f. The name, address and tax identification number of the purchaser or producer.

g. The type of tax for which the credit will be applied, and the first tax year in which the credits will be applied.

h. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, and tax identification number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

52.27(2) Computation of the credit. The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or 44 cents per 1000 standard cubic feet of hydrogen fuel, or \$4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or \$4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility may exceed 12 months.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an

REVENUE DEPARTMENT[701](cont'd)

eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that are generated and purchased from an eligible facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the purchaser or producer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.41(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board. In addition, the department will not issue a tax credit certificate to any person who received a wind energy production tax credit in accordance with Iowa Code chapter 476B.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro-rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a renewable energy facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and purchased between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased after December 31, 2020.

To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.27(3) Transfer of the renewable energy tax credit certificate. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, share-

holders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and 2005 Iowa Acts, Senate File 390.

ITEM 5. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.15(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, owners of qualified wind energy production facilities approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the wind energy production tax credit, how the wind energy production tax credit is computed, how the wind energy production tax credit can be transferred and other details about the credit, see rule 701—52.26(422). See also the administrative rules for eligibility for the wind energy production tax credit for the Iowa utilities board in rule 199—15.18(476,81GA, SF390, HF882).

This rule is intended to implement Iowa Code section 422.60 and Iowa Code chapter 476B as amended by 2005 Iowa Acts, House File 882, sections 163 through 171.

ITEM 6. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.16(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the renewable energy tax credit, how the renewable energy tax credit is computed, how the renewable energy tax credit can be transferred and other details about the credit, see rule 701—52.27(422). See also the administrative rules for eligibility for the renewable energy tax credit for the Iowa utilities board in rule 199—15.18(476,81GA, SF390, HF882).

This rule is intended to implement Iowa Code section 422.60 and 2005 Iowa Acts, Senate File 390.

ARC 4656B**SECRETARY OF STATE[721]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 9.7, 9A.3(4), 9D.2, and 9E.17; chapters 17A, 490, and 499; section 504A.91; and 2002 Iowa Acts, chapter 1121, section 6, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," Chapter 3, "Administrative Hearings," Chapter 4, "Forms," Chapter 7, "Agency Procedure for Rule Making," Chapter 8, "Petitions for Rule Making," Chapter 9, "Declaratory Orders," Chapter 40, "Corporations," Chapter 42, "Athlete Agent Registration," and to rescind Chapter 44, "Registration of Waste Tire Haulers," and Chapter 45, "Civil Penalties for Waste Tire Haulers," Iowa Administrative Code.

The proposed amendments revise rules identifying a change in location of certain offices of the Secretary of State from the Hoover State Office Building to the Lucas State Office Building and repeal two chapters of rules consistent with action of the 2002 Session of the General Assembly regarding regulation of waste tire haulers as those duties were assigned to the Department of Natural Resources effective July 1, 2002.

Any interested person may make written comments on the proposed amendments on or before December 15, 2005. Comments should be directed to Charles Krogmeier, Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4682.

These amendments are intended to implement Iowa Code chapters 9, 9A, 9D, 9E, 17A, 490, and 499.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 1.2(3) as follows:

1.2(3) Any questions on corporations or procedures should be directed to the director of the ~~corporation business services~~ *business services* division located in the ~~Hoover Lucas State Office Building~~, Des Moines, Iowa 50319. The telephone number is (515)281-5204.

ITEM 2. Amend subrule 1.6(4) as follows:

1.6(4) ~~The notaries public division is located in the Hoover Building, Des Moines, Iowa 50319, and the telephone number is (515)281-3677. Notary public services are part of the business services division located in the Lucas Building, Des Moines, Iowa 50319. The telephone number is (515) 281-5204.~~

ITEM 3. Amend rule 721—3.4(17A) as follows:

721—3.4(17A) Commencing the contested case. A request for a hearing shall be submitted within 15 days from the individual's receipt of the agency's intended action and shall be

submitted in writing by personal service or by certified mail, return receipt requested, to the Secretary of State, ~~Corporations Business Services Division, Hoover Lucas State Office Building, Des Moines, Iowa 50319.~~ A request for a hearing shall be considered filed on the date of personal service, or on the date of the United States Postal Service postmark.

ITEM 4. Amend rule **721—4.1(17A)**, first unnumbered paragraph, as follows:

Copies of forms and instructions of a general nature ~~and those relating to elections~~ may be seen at the Office of Secretary of State, Statehouse, Des Moines, Iowa 50319. Copies of forms and instructions relating to corporation matters ~~and the uniform commercial code, elections and other services~~ may be seen at the respective divisions which are located in the ~~Hoover Lucas Building, Second Floor,~~ Des Moines, Iowa 50319.

ITEM 5. Amend subrule **4.1(2)**, last paragraph, as follows:

Copies of application and bond forms for notaries public are available to the public upon request to the Notary Clerk, Office of the Secretary of State, ~~Hoover Lucas Building, Des Moines, Iowa 50319, (515)281-3677. The telephone number is (515)281-5204.~~

ITEM 6. Amend subrule 7.5(1) as follows:

7.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Chief Deputy Secretary of State, ~~Second Floor, Hoover Lucas State Office Building, Des Moines, Iowa 50319,~~ or the person designated in the Notice of Intended Action.

ITEM 7. Amend subrule 7.6(2), introductory paragraph, as follows:

7.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to the Chief Deputy Secretary of State, ~~Second Floor, Hoover Lucas State Office Building, Des Moines, Iowa 50319.~~ The application for registration shall state:

ITEM 8. Amend subrule 7.11(1) as follows:

7.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Chief Deputy Secretary of State, ~~Hoover Lucas State Office Building, Des Moines, Iowa 50319.~~ The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 9. Amend rule 721—8.1(17A), introductory paragraph, as follows:

721—8.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the secretary of state at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, ~~Second Floor, Hoover Lucas State Office Building, Des Moines, Iowa 50319.~~ A petition is deemed filed when it is received in either office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this pur-

SECRETARY OF STATE[721](cont'd)

pose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 10. Amend rule 721—8.3(17A) as follows:

721—8.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Chief Deputy Secretary of State, ~~Second Floor, Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 11. Amend rule 721—9.1(17A), introductory paragraph, as follows:

721—9.1(17A) Petition for declaratory order. Any person may file a petition with the secretary of state for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the secretary at the Secretary of State’s Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State’s Office, ~~Second Floor, Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The secretary of state’s office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 12. Amend subrule 9.3(3), introductory paragraph, as follows:

9.3(3) A petition for intervention shall be filed at the Secretary of State’s Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State’s Office, ~~Second Floor, Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 13. Amend rule 721—9.5(17A) as follows:

721—9.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Deputy Secretary of State, ~~Second Floor, Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 14. Amend subrule 9.6(2) as follows:

9.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Secretary of State’s Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State’s Office, ~~Second Floor, Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the secretary.

ITEM 15. Amend rule 721—40.1(490,499,504A), introductory paragraph, as follows:

721—40.1(490,499,504A) Filing of documents. Documents pertaining to profit corporations, nonprofit corporations, and cooperative associations shall be delivered for filing to the office of Secretary of State, ~~Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 16. Amend rule 721—42.2(9A,17A) as follows:

721—42.2(9A,17A) Surety bond. An athlete agent shall have on file with the secretary of state, before the issuance or renewal of a certificate of registration, a surety bond executed by a surety company authorized to do business in this state, in the sum of \$25,000.

The bond shall be executed on the form prescribed by the secretary of state. The prescribed bond form may be obtained by writing to the Secretary of State, ~~Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319, or by calling ~~(515)242-5074~~ (515)281-5204.

ITEM 17. Amend rule 721—42.3(9A,17A) as follows:

721—42.3(9A,17A) Agent contract. An agent contract to be entered into by a registered athlete agent and a student athlete who has not previously signed a contract of employment with a professional sports team shall be on a form approved by the secretary of state. If the form of the contract is in compliance with any player’s association form contract, the ~~contract shall be approved by the secretary of state~~ shall approve the contract. Forms may be submitted to the secretary of state for approval by forwarding the forms to: Secretary of State, Athlete Agent Registration, ~~Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 18. Amend rule 721—42.4(9A,17A) as follows:

721—42.4(9A,17A) General information. Further information pertaining to the Registration of Athlete Agents Act and all application forms may be obtained by contacting the Secretary of State, Corporations Division, ~~Hoover~~ Lucas State Office Building, Des Moines, Iowa 50319, ~~(515)242-5074~~ (515)281-5204 during regular office hours, 8 a.m. to 4:30 p.m. Monday through Friday except legal holidays.

ITEM 19. Rescind and reserve **721—Chapter 44** and **721—Chapter 45**.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 10, 2005, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 1.60%
32-89 days	Minimum 2.15%
90-179 days	Minimum 2.60%
180-364 days	Minimum 2.80%
One year to 397 days	Minimum 3.00%
More than 397 days	Minimum 4.40%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 4690B
ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 101, "Parking," Iowa Administrative Code.

The purpose of this rule making is to update rules regulating parking on the capitol complex by revising the definition of "employee" to make it easier to enforce segregation of parking in employee and visitor lots and to provide specifically in the rules for parking for state employees who do not regularly work on the capitol complex and for board and commission members who work on the capitol complex only occasionally.

The waiver process set forth in 11 IAC 9 applies to any request for waiver from these rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2005, as **ARC 4528B**. Public comments concerning the proposed amendments were accepted until 4:30 p.m. on October 18, 2005. None were received. There was a public hearing held on October 18, 2005, beginning at 10 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time no interested parties presented their views either orally or in writing.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 8A.323.

These amendments will become effective December 28, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [101.2, 101.3(2), 101.3(3), 101.5 to 101.7, 101.9(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 4528B**, IAB 9/28/05.

[Filed 11/4/05, effective 12/28/05]
 [Published 11/23/05]

[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4655B
AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5 203.2, 203C.5 and 203D.4, the Department of Agriculture and Land Stewardship hereby rescinds Chapter 90, "State Licensed Warehouses and Warehouse Operators," and adopts new Chapter 90 with the same title; rescinds Chapter 91, "Licensed Grain Dealers and Bargaining Agents," and adopts new Chapter 91, "Licensed Grain Dealers"; rescinds Chapter 92, "Participation in Grain Indemnity Fund," and adopts new Chapter 92 with the same title; rescinds Chapter 93, "Grain Indemnity Fund Board—Organization and Operations," and

adopts new Chapter 93 with the same title; and rescinds Chapter 94, "Claims Against the Grain Depositors and Sellers Indemnity Fund," and adopts new Chapter 94 with the same title, Iowa Administrative Code.

The new chapters are intended to bring the rules concerning warehouse operators, grain dealers and indemnity fund board operations into conformity with changes in Iowa Code chapters 203, 203A, 203C, and 203D (2005 Code of Iowa). The new chapters are also intended to bring the rules into conformity with current Department enforcement practices and to eliminate unnecessary restrictions on grain storage structures. Existing Chapters 90 and 91 have not had any substantial revisions since 1992. Existing Chapters 92, 93 and 94 have not had any substantial revisions since 1988 and are in conflict with the changes to Iowa Code chapter 203D.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4508B**. No public comments were received on these rules. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code chapters 203, 203C and 203D (2005).

These rules will become effective December 28, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 90 to 94] is being omitted. These rules are identical to those published under Notice as **ARC 4508B**, IAB 9/14/05.

[Filed 10/21/05, effective 12/28/05]
 [Published 11/23/05]

[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4693B
CORRECTIONS DEPARTMENT[201]

Adopted and Filed

Pursuant to the authority of Iowa Code section 356.36, the Department of Corrections hereby adopts amendments to Chapter 50, "Jail Facilities," Iowa Administrative Code.

These rules provide the standards for county jail facility inspections and are being revised consistent with American Correctional Association industry standards for jail operations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4516B**. A public hearing on the Notice of Intended Action was held on October 4, 2005, between the hours of 11 a.m. and 1 p.m. at the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa. At the hearing, written and oral comments were received from persons representing the Iowa State Sheriffs and Deputies Association, Iowa State Association of Counties, Polk County Sheriff's Office, Woodbury County Sheriff's Office and Louisa County Sheriff's Office. The amendments adopted herein differ from the proposed amendments as a result of the public comments related to the amount of cell space between the floor and ceiling, the amount of exercise area for segregated prisoners, and policy on restraint devices, medical services, and the grievance and discipline process. In addition, a suggestion was made that new language under subrule 50.11(3) not be adopted because the language duplicates language identified

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under the administrative rules for the Iowa Law Enforcement Academy. Therefore, the following changes from the Notice have been made:

1. In 50.6(2)“a,” 50.7(2)“a,” 50.8(2)“a” and 50.8(4)“b,” the minimum amount of cell space allowed between the floor and ceiling was changed from eight feet to seven feet.

2. The following sentence was added to 50.8(5), which pertains to exercise areas: “Segregation units may have individual exercise areas containing a minimum of 180 square feet of unencumbered space.”

3. The word “will” was changed to “shall” in 50.13(2)“c”(5). The subparagraph now reads as follows:

“(5) Random, unannounced, and irregular searches of areas accessible to prisoners shall be conducted for contraband and weapons.”

4. A sentence was added to the introductory paragraph of 50.13(2)“f” to require that the jail administrator have a written policy on restraint devices.

5. The introductory paragraph of 201—50.15(356, 356A) was amended to read as follows:

“**201—50.15(356,356A) Medical services.** The jail administrator shall establish a written policy and procedure to ensure that prisoners have the opportunity to receive necessary medical attention for the prisoners’ objectively serious medical and dental needs which are known to the jail staff. A serious medical need is one that has been diagnosed by a physician as requiring treatment or is one that is so obvious that even a lay person would easily recognize the necessity for a physician’s attention. The plan shall include a procedure for emergency care. Responsibility for the costs of medical services and products remains that of the prisoner. However, no prisoner will be denied necessary medical services, dental service, medicine or prostheses because of lack of ability to pay. Medical and dental prostheses shall be provided only for the serious medical needs of the prisoner, as determined by a licensed health care professional. Cosmetic or elective procedures need not be provided.”

6. 50.21(3)“c” was amended to read as follows:

“c. A prisoner grievance procedure which includes at least one level of appeal. A jail may limit the use of the grievance process in order to make sure that it is not abused.”

7. 50.21(4)“b”(11) was revised as follows:

“(11) A policy and procedure that allows prisoners an opportunity to make a statement and present documentary evidence at the hearing and to call witnesses on their behalf unless calling witnesses creates a threat to the security or safety of the facility. The reasons for denying such a request shall be documented.”

8. The proposed amendment to rescind subrule 50.11(3) and replace it with a new subrule was not adopted because the new subrule duplicated language contained in the administrative rules of the Iowa Law Enforcement Academy.

These amendments are intended to implement Iowa Code section 356.36.

These amendments will become effective December 28, 2005.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 50] is being omitted.

With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4516B**, IAB 9/14/05.

[Filed 11/4/05, effective 12/28/05]
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[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4692B**CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 356.36, the Department of Corrections hereby adopts amendments to Chapter 51, “Temporary Holding Facilities,” Iowa Administrative Code.

These rules provide the standards for temporary holding facility inspections and are being revised consistent with American Correctional Association industry standards for temporary holding facility operations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4517B**. A public hearing was held on October 4, 2005, between the hours of 11 a.m. and 1 p.m. at the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa. At that time, written and oral comments were received from persons representing the Iowa State Sheriffs and Deputies Association, Iowa State Association of Counties, Polk County Sheriff’s Office, Woodbury County Sheriff’s Office and Louisa County Sheriff’s Office. The amendments as adopted herein differ from the proposed amendments as a result of the public comments related to the amount of cell space between the floor and ceiling, searches, policy on restraint devices, and medical services. Therefore, the following changes to the amendments published in the Notice of Intended Action are being made:

1. In 51.6(2)“a,” 51.7(1)“a”(4), and 51.7(2)“a,” the required space between the floor and ceiling for new housing units was changed from eight feet to seven feet.

2. In subparagraph 51.11(2)“c”(5), “will” was changed to “shall” to require that random, unannounced, irregularly scheduled searches of areas accessible to detainees be conducted for contraband and weapons.

3. Paragraph 51.11(2)“f” was changed to require that the facility administrator have a written policy regarding restraint devices.

4. Rule 201—51.13(356,356A) was revised to clarify provisions regarding serious medical and dental needs of detainees.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code section 356.36.

The following amendments are adopted.

ITEM 1. Amend rule **201—51.1(356,356A)** as follows:

Rescind the definition of “major remodeling” and adopt the following **new** definitions in alphabetical order:

“Major remodeling” means construction that changes the architectural design of an existing facility and that increases or decreases capacity.

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“Mental illness” means a psychiatric illness or disease expressed primarily through abnormalities of thought, feeling, and behavior producing either distress or impaired function.

“Unencumbered space” means floor space that is not encumbered by furnishings or fixtures. “Unencumbered space” is determined by subtracting the floor area encumbered by furnishings and fixtures from the total floor area. (All fixtures must be in operational position for these calculations.)

“Weapon” means any instrument with a primary intended use of self-defense or protection of another or to gain or maintain compliance from an individual. See paragraph 51.11(2)“b.”

Amend the following definition:

“Temporary holding facility” means secure holding rooms or cells administered by a law enforcement agency where detainees may be held for a limited period of time, not to exceed 24 hours, and a reasonable time thereafter to arrange for transportation to an appropriate facility. *A law enforcement agency is not required to meet the standards for temporary holding facilities provided a detainee is held for less than two hours prior to transportation to an appropriate facility and a trained staff person of the agency is available to respond to, render aid to, or release the detainee in the event of a life-endangering emergency.*

ITEM 2. Amend subrule 51.2(5) as follows:

51.2(5) Nondiscriminatory treatment. Each facility administrator shall ensure that staff and detainees are not subject to discriminatory treatment based upon race, religion, nationality, ~~handicap~~ disability, sex or age, absent compelling reason for said discriminatory treatment. *Discrimination on the basis of a disability is prohibited in the provision of services, programs and activities.*

ITEM 3. Amend paragraph **51.4(8)“c”** as follows:

c. Janitorial supplies shall be stored in a manner to prevent unauthorized detainee access. Janitorial supplies and equipment shall not be stored in detainee living areas. ~~Wet mops shall be dried to deter the growth of mildew.~~

ITEM 4. Amend subrule 51.5(3) as follows:

51.5(3) Except in emergency situations, no multiple occupancy cell shall house more than six detainees ~~than the designed capacity.~~

ITEM 5. Amend subrule 51.6(1) as follows:

51.6(1) New housing units may be *dormitory units*, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 70 square feet of floor space for the first detainee and an additional 50 square feet of floor space for each additional detainee. ~~Maximum occupancy in a multiple occupancy cell shall be six detainees.~~ *Dormitory units shall have a minimum of 35 square feet of unencumbered floor space per detainee.*

ITEM 6. Amend paragraph **51.6(2)“a”** as follows:

a. No less than 8'7 feet of space between the floor and ceiling.

ITEM 7. Amend subrule 51.6(3) as follows:

51.6(3) Each new *dormitory unit* or single and multiple occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never involuntarily locked in the room and denied access to the toilet facilities.

ITEM 8. Adopt **new** subrule 51.6(7) as follows:

51.6(7) Holding cells shall provide a minimum of 20 square feet per detainee with a total capacity of eight detainees per cell. Holding cells need not contain any fixture other than a means whereby detainees may sit. Drinking water and toilet facilities shall be made available under staff supervision. Detainees will be supplied blankets if the detainees are detained overnight in the holding cell.

ITEM 9. Amend subrule 51.7(1) as follows:

51.7(1) New housing units may be *dormitory units*, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 35 square feet of unencumbered floor space for each detainee. ~~Maximum occupancy in a multiple occupancy cell shall be six detainees.~~ *Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space per detainee.*

a. *This paragraph shall apply to all temporary holding facilities that are of new or remodeled construction after December 28, 2005, and may apply to temporary holding facilities that were constructed prior to December 28, 2005.*

(1) *Single occupancy cells shall provide a minimum of 35 square feet of unencumbered floor space. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 70 square feet of total floor space.*

(2) *Multiple occupancy cells shall provide a minimum of 25 square feet of unencumbered floor space for each detainee. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 35 square feet of unencumbered floor space for each detainee.*

(3) *Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space for each detainee.*

(4) *A facility may contain one or more single occupancy cells, designated as special-needs cells, in which violent persons may be temporarily contained. The cell shall have not less than 40 square feet of floor space and a ceiling height of not less than 7 feet. The cell shall be constructed to minimize self-injury. Toilet facilities may be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water shall be accessible from staff upon request.*

b. *Reserved.*

ITEM 10. Amend paragraph **51.7(2)“a”** as follows:

a. No less than 8'7 feet of space between the floor and ceiling.

ITEM 11. Amend subrule 51.7(3) as follows:

51.7(3) Each new *dormitory unit* or single and multiple occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water for each group of nine detainees or portion thereof. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never involuntarily locked in the room and denied access to the toilet facilities.

ITEM 12. Amend subrules 51.8(1) to 51.8(3) as follows:

51.8(1) Approval of building plans. All new construction or major remodeling plans shall be approved prior to commencement of construction by the state fire marshal or qualified local fire prevention authority using Life Safety Code NFPA-101.

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51.8(2) Fire marshal's certificate *Compliance with fire marshal rules.* No facility shall be occupied by a prisoner detainee unless the state fire marshal or qualified local fire prevention authority has issued a fire certificate of inspection within the last 18 24 calendar months. ~~The state fire marshal or qualified local fire prevention authority shall issue this certificate only if documenting that the facility complies with the fire safety standards in these rules as well as applicable standards of for temporary holding facilities included in administrative rules promulgated by the state fire marshal. If not in substantial compliance, the facility may be required to submit a corrective plan of action for noncompliant items to the state fire marshal or local fire prevention authority. If deadlines are not met in accordance with the plan of action, the director of the department of corrections may initiate closing proceedings. In jurisdictions lacking personnel specifically trained in fire prevention safety standards, inspections shall be performed by staff of the state fire marshal's office or designee under authority of Iowa Code section 100.12.~~

Temporary holding facilities may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the Iowa department of corrections, a temporary holding facility administrator, or the chief executive of an agency which administers a temporary holding facility retains the authority to may request the state fire marshal review as deemed necessary. to inspect a temporary holding facility for compliance with fire safety standards. If the state fire marshal finds, based on such an inspection, that a temporary holding facility is not in substantial compliance with fire safety standards, the state fire marshal may require the facility administrator to submit a plan of correction of violations of these standards to the fire marshal. The director of the Iowa department of corrections may initiate proceedings to close the temporary holding facility if the facility does not comply with the plan of correction.

51.8(3) Evacuation plan. The administrator of each facility shall prepare a written plan for emergency evacuation of the facility in the event of fire or other disaster. This plan shall include security arrangements and one or more alternate housing arrangements for displaced detainees. All personnel employed in the facility shall be thoroughly familiar with this plan, and relevant portions thereof shall be conspicuously posted. Fire Evacuation drills shall be practiced or simulated by all facility staff on at least an annual basis, and a record thereof shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

ITEM 13. Amend subrule 51.8(5) as follows:

51.8(5) Fire extinguishers. All temporary holding facilities shall be equipped with ~~not less than one AA-ABC fire extinguisher in operable condition for each 3,000 square feet on any given floor of the building. fire extinguishing equipment approved and located in accordance with standards established by the state fire marshal by administrative rule.~~ Fire extinguishers ~~will~~ shall be tested at least annually to ensure they remain in operative condition. A record of such checks shall be maintained. ~~Fire extinguishers must be wall-mounted (NFPA-10).~~

ITEM 14. Amend subrule 51.8(8) as follows:

51.8(8) Fire alarms. A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories meeting requirements established by the state fire marshal shall be installed and maintained in operational

condition according to the factory manual. These alarms shall be ceiling-mounted if possible and shall be so located and protected from detainee access. The detection equipment shall be battery-operated or so constructed as to continue operating during a power failure. Battery-operated systems shall be tested monthly. Electronic systems shall be tested at least annually. A record of test dates and results shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

ITEM 15. Amend subrule 51.8(11) as follows:

51.8(11) Mattresses. Only fire-resistant mattresses of a type that will not sustain a flame and are certified by the manufacturer ~~an independent testing laboratory and approved by that meet the standards established by the state fire marshal or qualified local fire prevention authority~~ shall be used in the temporary holding facilities. Mattresses that are ripped, are excessively cracked or contain large holes ~~will~~ shall be replaced. Pillows ~~will~~ shall be replaced when torn or excessively cracked.

ITEM 16. Amend subrule 51.9(1) as follows:

51.9(1) Requirements for employment. No person shall be recruited, selected or appointed to serve as a holding facility administrator unless the person:

~~a. Is a qualified peace officer meeting the requirements of 501—subrules 9.3(1) and 9.3(2).~~

~~b a.~~ Is 18 years of age or older.

~~c b.~~ Is able to read and write in English.

~~d c.~~ Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files.

~~e d.~~ Is not by reason of conscience or belief opposed to the use of force, when appropriate or necessary to fulfill the person's duties.

~~f e.~~ Has the ability to perform the essential elements of the position as defined in the department job specification.

~~g.~~ Is free of contagious disease.

~~f. Is an appropriate candidate for employment as demonstrated by qualified psychological screening.~~

ITEM 17. Amend subrule 51.9(3) as follows:

51.9(3) Business transactions with detainees *Conflict of interest.* No person working in a facility shall transact any business with any detainee ~~or member of a detainee's family,~~ nor shall any person working in a facility arrange through another party any business transaction with a detainee. *The facility shall have a written code of ethics that shall be provided to all employees. At a minimum, the code shall:*

a. Prohibit staff from using their official positions to secure privileges for themselves or others.

b. Prohibit staff from engaging in activities that constitute a conflict of interest.

ITEM 18. Amend subrule **51.10(1)** by amending paragraphs "**d**" and "**e**," relettering paragraph "**g**" as paragraph "**h**" and adopting **new** paragraph "**g**" as follows:

d. If the individual is to have access to a handgun firearm at any time, the person shall hold a professional valid permit to carry weapons issued under the authority of Iowa Code section ~~724.6 chapter~~ 724.

e. The individual shall be professionally trained and qualified in the use of any firearm, electric restraint control device and chemical control agents ~~if used prior to their use~~ in connection with the individual's duties at the facility.

g. All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Associa-

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tion medication training program or other recognized medication administration course.

g. h. The holding facility administrator shall record by log sheet the signature(s) of all staff performing temporary holding facility duties, attesting that they have full knowledge of the administrative rules referring to facility standards and the written policies and procedures governing the facility's operation.

ITEM 19. Amend subrule **51.10(2)** by adopting new paragraphs "**a**" and "**b**" as follows:

a. The training shall include a minimum of ten hours of training within the first year of employment. Training shall include the following or comparable course content:

(1) Introduction to Iowa criminal procedure and criminal law as applicable to the temporary holding facility setting, including laws relating to the use of force.

(2) Security procedures, including procedures regarding the proper methods of transporting detainees.

(3) Supervision of detainees, including instruction on the basic civil rights of a detainee, which would be applicable to a temporary holding facility.

(4) Recognition of symptoms of mental illness, retardation or substance abuse.

(5) Specific instruction in the prevention of suicides.

b. During each fiscal year of employment, following completion of the required ten hours of training, temporary holding facility workers and administrators shall complete, at a minimum, five hours of in-service training, not to include hours spent in maintaining required certification or proficiency in first aid, life support, and handling of firearms.

ITEM 20. Amend subrule 51.10(3) as follows:

51.10(3) First aid. At least one staff member on duty at the facility shall be trained in first aid (or the equivalent) and CPR.

a. *The individual shall hold an American Red Cross standard first-aid certificate or the equivalent or one of the following:*

(1) *Certification as an Iowa law enforcement emergency care provider from the Iowa department of public health;*

(2) *Certification of completion of an emergency medical technician program; or*

(3) *Licensure to practice as a licensed practical nurse, registered nurse or medical practitioner in the state of Iowa.*

b. *The individual shall be certified as having successfully completed the basic life support training conducted under the program of the American Heart Association or the American Red Cross.*

c. *All certification or licensure required by this subrule must be maintained current according to the standards of the certifying or licensing agency.*

ITEM 21. Amend rule 201—51.11(356,356A), introductory paragraph, as follows:

201—51.11(356,356A) Standard operating procedures manual. Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each municipality shall establish and the facility administrator shall ensure compliance with a standard operating procedures manual to include the following administrative rules: subrules 51.2(4), 51.2(5), 51.4(3), 51.4(7), 51.4(10), 51.8(3), 51.8(4), 51.8(5), 51.8(7), 51.8(8), 51.8(11), 51.9(1), 51.9(2), 51.9(3), 51.10(1), 51.10(2), 51.10(3) and rules 51.11(356,356A) to 51.19(356,356A) as noted. The following standards do not require written policy: 51.13(4) and 51.14(4).

ITEM 22. Amend subrule 51.11(1) as follows:

Amend the catchwords as follows:

51.11(1) ~~Admission and classification.~~ *Admission/ classification and security.*

Amend paragraph "**d**" by adopting the following new subparagraph (4):

(4) Prisoners likely to be exploited or victimized by others.

Adopt the following new paragraph "**g**":

g. Housing for detainees with disabilities shall be designed for the detainees' use, or reasonable accommodations shall be provided for the detainees' safety and security.

ITEM 23. Amend subrule 51.11(2) as follows:

Amend the catchwords as follows:

51.11(2) *Security and control.*

Amend paragraph "**a**," subparagraph (3), as follows:

(3) At least hourly, personal observations of individual detainees shall be made and documented. Detainees considered to be in physical jeopardy because of physical or mental condition, including apparently intoxicated persons, as indicated by the medical history intake process and by personal observations, shall be checked personally at least every 30 minutes until the condition is alleviated. Closed circuit television (CCTV)-audio monitoring system may supplement, but shall not replace, personal observations. In order to use a CCTV-audio monitoring system, the following requirements must be met: CCTV and audio must be operational at all times. Visual and audio must be clear and distinct. ~~Detainees shall be able to be observed at all times. However, observation~~ *Observation* of shower and restroom activities shall be at the discretion of the facility administrator.

Amend paragraph "**a**," subparagraph (5), as follows:

(5) ~~When there are women in the facility population, a female employee shall be on the premises females are housed in the facility, at least one female staff member shall be on duty in the facility at all times,~~ in accordance with Iowa Code section 356.5(6).

Amend paragraph "**b**" as follows:

b. Weapons. Except in an emergency situation, no firearms, chemical control agents, saps, or gloves shall be allowed in an area occupied by detainees.

Amend paragraph "**c**" by amending subparagraph (1) and adopting the following new subparagraphs (4) and (5):

(1) All detainees and detainees' property entering the facility shall be thoroughly searched; searches of persons charged with simple misdemeanors shall follow provisions of Iowa Code section 804.30.

(4) *Detainee rules shall contain a clear definition of each item permitted in the facility. All other items shall be considered contraband.*

(5) *Random, unannounced, irregularly scheduled searches of areas accessible to detainees shall be conducted for contraband and weapons.*

Amend paragraphs "**d**" and "**e**" as follows:

d. Key control. *Facility keys must be stored in a secure area when not in use. There must be at least one full set of facility keys, separate from those in use, stored in a safe place and accessible only to designated facility personnel for use in the event of an emergency.* The facility administrator will identify those persons who may have access to keys.

e. Detainees' property. All personal property of detainees shall be inventoried and accounted for according to the provisions of Iowa Code section 804.19.

Adopt the following new paragraphs "**f**" and "**g**":

f. Restraint devices. The facility administrator shall have a written policy on the restraint devices. Restraint de-

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vices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes facility security. There shall be defined circumstances under which supervisory approval is needed prior to application. Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device. While restrained, detainees shall be either clothed or covered in a manner that maximizes detainee privacy. Four/five-point restraints may be used only when other types of restraints have proven ineffective. If detainees are restrained in a four/five-point position, the following minimum procedures shall be followed:

- (1) Observation by staff shall be continuous;
- (2) Personal visual observation of the detainee and the restraint device application shall be made at least every 15 minutes;
- (3) Restraint guidelines shall include consideration of an individual's physical and health condition, such as body weight; and
- (4) All decisions and actions shall be documented.
 - g. Facility security.
 - (1) All areas of the facility shall be inspected regularly and frequently and kept clear of large posters, pictures and articles of clothing that obstruct the view of detainees by facility staff.
 - (2) All facility locks, doors, bars, windows, screens, grilles and fencing shall be inspected on at least a monthly basis. Any damaged or nonfunctioning equipment or fixtures must be reported to the facility administrator in writing. The facility administrator shall ensure prompt repair of any damaged or nonfunctioning equipment or fixture.
 - (3) The facility administrator shall develop written policy and procedures for the movement or transportation of detainees outside the secure area of the facility. The policy shall require procedures that will ensure the safety of the facility staff and the public and prevent detainee escape. The policy shall provide procedures for movement of detainees for medical treatment and to and from the courts and other facilities. The classification and security risk of the detainee to be moved will determine the number of staff required and the type of restraints to be used, if any.
 - (4) The facility administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plan shall be made available to all applicable personnel and shall be reviewed by facility staff at least annually and updated as needed.

ITEM 24. Amend subrule **51.12(1)**, paragraph "b," as follows:

- b. Unless cleaning is done by staff, necessary cleaning equipment shall be provided to detainees. Cleaning equipment shall be removed from the cell when cleaning is complete. ~~Mops will be stored for drying after use.~~

ITEM 25. Amend rule 201—51.13(356,356A), introductory paragraph, as follows:

201—51.13(356,356A) Medical services. The facility administrator shall establish a written policy and procedure to ensure that detainees have the opportunity to receive necessary medical attention for ~~illness and injury and necessary dental care.~~ *the detainee's objectively serious medical and dental needs which are known to the facility staff. A serious medical need is one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a lay*

person would easily recognize the necessity for a physician's attention. The plan shall include a procedure for emergency services day or night and a procedure for regular medical attention. Responsibility for the costs of medical services remains that of the detainee. However, no detainee will be denied necessary medical services, dental service, or medicine because of a lack of ability to pay. Medical and dental prostheses shall be provided only ~~when for~~ the serious medical needs of the detainee ~~patient would be adversely affected without them,~~ as determined by a licensed health care professional. Cosmetic or elective procedures need not be provided.

ITEM 26. Amend subrule 51.13(2) as follows:

51.13(2) Trained staff. ~~Rescinded IAB 2/19/92, effective 3/27/92.~~

- a. *All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.*

- b. *At least one staff member on duty at the facility shall be currently trained in first aid (or the equivalent) and CPR.*

ITEM 27. Amend subrule 51.13(5) as follows:

51.13(5) Chemical control agents. Detainees affected by a chemical control agent ~~must~~ *shall* be offered a medical examination and appropriate treatment as soon as reasonable.

ITEM 28. Amend subrule **51.13(6)**, paragraphs "c" and "d," as follows:

- c. *As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the facility. The intake procedure shall include screening for potential self-injury or suicide. Facility staff with actual knowledge that there is a substantial risk that a detainee intends to commit suicide shall take reasonable measures to abate the risk.* The facility shall have a written suicide prevention plan. Essential elements of the plan shall include training to recognize the potential for suicide, communication between staff and appropriate housing and intervention procedures.

- d. *During times when there is no means of immediate access to the district court, a person arrested on a charge constituting a simple misdemeanor and believed by the arresting officer/agency to be mentally ill, and because of that illness is likely to physically injure the person's self or others, shall be admitted to the facility only after the arresting officer/agency has demonstrated a reasonable effort to comply with the emergency hospitalization procedure as provided in Iowa Code section 229.22. The facility shall have a written plan to provide detainees access to services for the detection, diagnosis and treatment of mental illness.*

ITEM 29. Amend subrule **51.13(7)**, paragraph "b," as follows:

- b. *All prescription medicine shall be securely stored and inventory control practiced. Inventory control shall include documentation of all medication coming into the facility and the amount of medication returned or destroyed when the detainee is released.*

ITEM 30. Amend subrule **51.13(9)** as follows:

Amend paragraph "a," subparagraph (3), as follows:

- (3) Refrigerate: temperature that is thermostatically maintained between 2 degrees centigrade (36 degrees Fahrenheit) and 8 degrees centigrade (46 degrees Fahrenheit). *All medication required to be "cool" or "refrigerated" shall be stored in a separate refrigerator or in a separate locked container within a refrigerator that is used for other purposes.*

Amend paragraphs "c" and "d" as follows:

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c. Expired drugs or drugs not in unit dose packaging, whose administration had been discontinued by the attending physician, shall be destroyed by the facility administrator *or designee* in the presence of a witness. A record of drug destruction shall be made in each detainee's medical record. *The record shall include the name, the strength and the quantity of the drug destroyed; and the record shall be signed by the facility administrator or designee and by the witness.*

d. Medications dispensed by a pharmacy in unit dose packaging may be returned to the dispensing pharmacy pursuant to board of pharmacy examiners ~~rule 657—subrule 23.12(5)~~ *23.15(124,155A)*.

ITEM 31. Adopt **new** subrule 51.16(4) as follows:

51.16(4) Detaining non-U.S. citizens. When non-U.S. citizens are detained, they shall be advised of the right to have their consular officials notified or the nearest consular officials shall be notified of the detention, whichever is required by the Vienna Convention. Consular officials shall be given access to non-U.S. citizens in the facility and shall be allowed to provide consular assistance. When a facility administrator becomes aware of the death of a non-U.S. citizen, consular officials shall be notified.

ITEM 32. Rescind subrule **51.18(3)** and renumber subrules **51.18(4)** and **51.18(5)** as **51.18(3)** and **51.18(4)**.

ITEM 33. Amend renumbered subrules 51.18(3) and 51.18(4) as follows:

51.18(3) The following information shall be made available to all detainees and explained to any detainee unable to read English:

a. and b. No change.

c. ~~A procedure for handling detainees' grievances. A detainee grievance procedure which includes at least one level of appeal.~~

51.18(4) Deprivation of clothing, bedding, or hygienic supplies shall not be used as discipline or punishment. These items may be withheld from any detainee who the staff reasonably believes would destroy such items or use them as weapons, for self-injury or, to aid in escape, *or interfere with the normal operation of the facility.*

ITEM 34. Amend subrule **51.19(13)** by adopting the following **new** paragraph "**d**":

d. The state jail inspection unit of the department of corrections shall be notified within 24 hours of any death, attempted suicide, fire, escape, injury to staff or detainees from assaults, use of force and prisoner self-injuries. A copy of the investigative reports and other records shall be given to the state jail inspector upon request.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4673B

CREDIT UNION DIVISION[189]

Adopted and Filed

Pursuant to the authority of Iowa Code section 533.1, the Credit Union Review Board hereby amends Chapter 9, "Real Estate Lending," Iowa Administrative Code.

Chapter 9 defines real estate lending. The purpose for the amendment is to require evidence of title when lending for the purpose of acquisition or refinance of acquisition when a new mortgage, deed of trust, or similar instrument is filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2005, as **ARC 4541B**. Two comments were received. This amendment is identical to that published under Notice.

This amendment was adopted by the Board on November 2, 2005.

This amendment shall become effective December 28, 2005.

This amendment is intended to implement Iowa Code sections 533.4(21) and 533.16(4)"a."

The following amendment is adopted.

Adopt **new** rule 189—9.2(533) as follows:

189—9.2(533) Evidence of title. When lending for the purpose of acquisition or for the purpose of refinance of acquisition, when a new mortgage, deed of trust, or similar instrument is filed, the credit union shall obtain either:

1. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the credit union's mortgage, deed of trust, or similar instrument is a first lien on the real estate; or

2. Title insurance written by an insurance company licensed to do business in the state in which the real estate is located describing any existing liens and insuring the title to the real estate and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a first lien on the real estate.

This rule is intended to implement Iowa Code sections 533.4(21) and 533.16(4)"a."

[Filed 11/3/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4683B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby amends Chapter 3, "Multifamily Housing," Iowa Administrative Code.

These amendments allow a maximum loan term of up to 40 years and allow second mortgage loans with a principal amount up to 50 percent of the first loan amount.

These amendments do not contain a waiver provision, as the Authority does not intend to grant waivers under this program, other than as may be allowed pursuant to Chapter 18 of the Authority's rules.

Notice of Intended Action was published in the September 28, 2005, Iowa Administrative Bulletin as **ARC 4547B**. No public hearing was held on the proposed amendments. The Authority received no written comments on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority adopted these amendments on November 2, 2005.

These amendments will become effective on December 28, 2005.

These amendments are intended to implement Iowa Code sections 16.5(17), 16.18(1) and 16.18(2).

The following amendments are adopted.

ITEM 1. Amend paragraph **3.5(1)“d”** as follows:

d. The maximum loan term is 24 months for construction financing and ~~30~~ 40 years for permanent financing.

ITEM 2. Amend paragraph **3.34(3)“a”** as follows:

a. The maximum loan amount cannot exceed ~~25~~ 50 percent of the authority's first mortgage loan and second mortgage loan, if any, under the program.

ITEM 3. Amend paragraph **3.34(3)“b”** as follows:

b. The loan term shall not exceed ~~30~~ 40 years.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4689B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors for Cosmetology Arts and Sciences," Iowa Administrative Code.

These amendments implement changes to make the administrative rules consistent with legislative changes relating to intense pulsed light devices and to provide a mechanism for attestation of an applicant's high school graduation.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 14, 2005, as **ARC 4519B**. A public hearing was held on October 4, 2005, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. A comment was received to note that subrule 60.4(6) needed to be modified to accommodate licensees who would be renewing in 2007. The Board modified subrule 60.4(6) in response to comment. The subrule now reads as follows:

“60.4(6) A licensee who has an attestation on file with the board and who continues to utilize the procedure or device specified in the attestation shall meet the requirements of 645—Chapter 64 at the time of license renewal. A minimum of one hour of continuing education in the area of each procedure or device for which the licensee has received board certification shall be required beginning May 1, 2006. Continuing education credit in the area of the procedure or device is in addition to the hours of continuing education required for renewal of the license.”

The amendments were adopted by the Board of Cosmetology Arts and Sciences Examiners on November 2, 2005.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code chapters 147 and 157 as amended by 2005 Iowa Acts, House File 789.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [60.1, 60.2(1)“d” and “e,” 60.4(1) to 60.4(7), 60.5, 60.6] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4519B**, IAB 9/14/05.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4685B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Iowa Administrative Code.

The amendment amends subrule 60.2(1), paragraph “f,” to clarify the examination required for licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 14, 2005, as **ARC 4509B**. A public hearing was held on October 4, 2005, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. This amendment is identical to that published under Notice.

This amendment was adopted by the Board of Cosmetology Arts and Sciences Examiners on November 2, 2005.

This amendment will become effective December 28, 2005.

This amendment is intended to implement Iowa Code chapters 21, 147, 157 and 272C.

The following amendment is adopted.

Amend subrule **60.2(1)**, paragraph **“f,”** as follows:

f. Pass the *written practical and* theory examination for the particular practice discipline with a score of 75 percent or greater.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4686B
PROFESSIONAL LICENSURE
DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Chapter 61, "Licensure of Salons and Schools of Cosmetology Arts and Sciences," and Chapter 64, "Continuing Education for Cosmetology Arts and Sciences," Iowa Administrative Code.

The amendments amend rules to correct terminology and use the word "reactivation" instead of "reinstatement," clarify continuing education requirements, and delete the word "initial" in subrules 61.3(3) and 61.8(3) to allow the subrules to apply to all types of licenses.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 28, 2005, as **ARC 4525B**. A public hearing was held on October 18, 2005, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Comment was received regarding Item 1 of the Notice. Subrule 60.11(2), paragraph "c," which was amended in the Notice, is contained in rule 645—60.11(157), "License renewal"; however, rule 645—60.8(157) also refers to and is called "License renewal." The suggestion was made to amend rule 645—60.8(157) by adding new subrule 60.8(7), which contains the proposed language from subrule 60.11(2), paragraph "c," and to rescind rule 645—60.11(157). The Board modified the Notice to reflect this comment.

The amendments were adopted by the Board of Cosmetology Arts and Sciences Examiners on November 2, 2005.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 60.8(7) as follows:

60.8(7) Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

ITEM 2. Rescind and reserve rule **645—60.11(157)**.

ITEM 3. Amend subrule 61.3(3) as follows:

61.3(3) A salon that is issued an initial a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

ITEM 4. Amend rule 645—61.4(272C) as follows:

645—61.4(272C) Lapsed Inactive salon license.

61.4(1) If the renewal application and fee are not post-marked within 30 days after the license expiration date, the salon license is ~~lapsed~~ *inactive*. To ~~reinstate~~ *reactivate* a salon license, the ~~reinstatement~~ *reactivation application* and fee, ~~renewal fee for each biennium~~ *the license is lapsed and the late fee shall be submitted to the board office.*

61.4(2) A salon that has not renewed the salon license within the required time frame will have a ~~lapsed~~ *an inactive*

license and shall not provide cosmetology services until the license is ~~reinstated~~ *reactivated*.

~~61.4(3) After the reinstatement of a lapsed license, the salon shall renew at the next scheduled renewal cycle.~~

ITEM 5. Amend subrule 61.8(3) as follows:

61.8(3) ~~Schools~~ *A school* that ~~are~~ *is* issued their ~~initial~~ *license* within six months of the license renewal date will not be required to renew ~~their licenses~~ *the license* until the next renewal one year later.

ITEM 6. Amend rule 645—61.9(272C) as follows:

645—61.9(272C) Lapsed Inactive school license.

61.9(1) If the renewal application and fee are not post-marked within 30 days after the license expiration date, the school license is ~~lapsed~~ *inactive*. To ~~reinstate~~ *reactivate* the school license, the ~~reinstatement~~ *reactivation application* and fee, ~~renewal fee for each year the license is lapsed and the late fee shall be submitted to the board.~~

61.9(2) A school that has not renewed the school license within the required time frame will have a ~~lapsed~~ *an inactive* license and shall not provide schooling or services until the license is ~~reinstated~~ *reactivated*.

~~61.9(3) After the reinstatement of a lapsed license, the school shall renew at the next scheduled renewal date.~~

ITEM 7. Amend subrule 64.2(2) as follows:

64.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. ~~The new licensee will be required to complete a minimum of eight hours of continuing education per biennium each subsequent license renewal.~~

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4687B

PROFESSIONAL LICENSURE
DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 60, "Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences," Iowa Administrative Code.

This amendment adopts a new rule relating to temporary permits.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 28, 2005, as **ARC 4527B**. A public hearing was held on October 18, 2005, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building.

The following changes have been made from the Notice. The Board removed the requirement of taking the Iowa law examination from subrule 60.9(1) because it was noted that earlier Board action had amended the national examination

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

to include Iowa law questions. This Board action has made it no longer necessary for an applicant who is seeking a temporary permit to also take the separate Iowa law examination. In the same subrule, the Board also changed wording regarding individuals who are applying for an initial license.

This amendment was adopted by the Board of Cosmetology Arts and Sciences Examiners on November 2, 2005.

This amendment will become effective December 28, 2005.

This amendment is intended to implement Iowa Code chapters 21, 147, 155 and 272C.

The following amendment is adopted.

Rescind rules 645—60.9(157) and 645—60.10(157) and adopt the following **new** rule in lieu thereof:

645—60.9(157) Temporary permits.

60.9(1) Temporary permits to practice cosmetology arts and sciences. An applicant who is applying for initial licensure and who has never been licensed in another state and who has met the requirements for licensure except for the written examinations may apply for a temporary permit to practice cosmetology arts and sciences. The temporary permit shall be valid for a maximum of 60 days from the date of issuance. The temporary permit holder shall practice under direct supervision of a licensee. After 60 days, the temporary permit shall be invalid and the person may not practice cosmetology arts and sciences. The temporary permit shall be revoked if an applicant fails the written practical and theory examination twice. The applicant shall submit the temporary permit to the testing service before the applicant sits for another examination.

60.9(2) Temporary permit for demonstration or not-for-profit events. The board may issue a temporary permit for the purpose of demonstrating cosmetology arts and sciences services to the consuming public or for providing cosmetology arts and sciences services to the consuming public at not-for-profit events.

a. The permit shall be valid for (name of a specific event) for a salon, school, or person. The location, purpose and duration of the permit shall be stated on the permit.

b. The permit shall be valid for no more than 10 days.

c. A completed application shall be submitted on a form provided by the board at least 30 days in advance of the intended use date(s).

d. An application fee shall be submitted as set forth in these rules.

e. No more than four permits shall be issued to any applicant during a calendar year.

f. For not-for-profit events, individuals providing services must hold a current license provided by the board pursuant to rule 60.2(157).

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4688B

**PROFESSIONAL LICENSURE
DIVISION[645]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 62, "Fees," and Chapter 65, "Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools," Iowa Administrative Code.

Item 1 rescinds rule 645—62.1(147,157) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees, such as online renewals. The Board pre-noticed and noticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 31, 2005, as **ARC 4457B**. A public hearing was held on September 21, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Commenters noted that subrule 65.2(26) of the discipline rules includes a reference to "lapsed license" which should be removed since there is no longer a lapsed license status. Commenters also noted that subrule 62.1(4) needed to include reactivation fees for salons and schools, and 62.1(7) required clarification. The Board modified the subrules in response to comments received.

The amendments were adopted by the Board of Cosmetology Arts and Sciences Examiners on November 2, 2005.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

The following amendments are adopted.

ITEM 1. Rescind rule 645—62.1(147,157) and adopt the following **new** rule in lieu thereof:

645—62.1(147,157) License fees. All fees are nonrefundable.

62.1(1) Licensure fee for license to practice cosmetology arts and sciences, licensure by endorsement, licensure by reciprocity, or an instructor's license shall be \$60.

62.1(2) Biennial license renewal fee for each license for each biennium shall be \$60.

62.1(3) Late fee for failure to renew before expiration shall be \$60.

62.1(4) Reactivation fee for applicants licensed to practice cosmetology shall be \$120, for salons \$144 and for schools \$330.

62.1(5) Duplicate or reissued wallet card or license fee shall be \$20.

62.1(6) Fee for verification of license shall be \$20.

62.1(7) Returned check fee shall be \$25.

62.1(8) Disciplinary hearing fee shall be a maximum of \$75.

62.1(9) Temporary permit fee shall be \$35.

62.1(10) Written practical and theory examination fee shall be \$84.

62.1(11) Fee for retaking the written practical and theory examination shall be \$84.

62.1(12) Iowa law (jurisprudence) examination fee shall be \$36.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

62.1(13) Fee for retaking the Iowa law (jurisprudence) examination shall be \$36.

62.1(14) Fee for license to conduct a school teaching cosmetology arts and sciences shall be \$600.

62.1(15) Fee for renewal of a school license shall be \$270 annually.

62.1(16) Salon license fee shall be \$84.

62.1(17) Biennial license renewal fee for each salon license for each biennium shall be \$84.

62.1(18) Demonstrator and not-for-profit temporary permit fee shall be \$42 for the first day and \$12 for each day thereafter that the permit is valid.

62.1(19) Initial fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light device shall be \$25 for each type of procedure or certified laser product or intense pulsed light device.

62.1(20) Initial fee for certification of cosmetologists to administer chemical peels shall be \$25.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

ITEM 2. Amend subrule 65.2(26) as follows:

65.2(26) Representing oneself as a licensed individual or entity when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4657B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers hereby adopts amendments to Chapter 124, "Discipline for Hearing Aid Dispensers," and Chapter 125, "Fees," Iowa Administrative Code.

Item 2 rescinds rule 125.1(147,154A) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees, such as online renewals. The Board pre-noticed and noticed the fee rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 31, 2005, as **ARC 4454B**. A public hearing was held on September 21, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding a reference to "a lapsed license" that should be removed from Chapter 124, since there is no longer a lapsed license status. The Board adopted an amendment to correct the reference, and that amendment has been included in this rule making.

These amendments were adopted by the Board of Examiners for the Licensing and Regulation of Hearing Aid Dispensers on October 31, 2005.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 154A and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 124.2(31) as follows:

124.2(31) Representing oneself as a licensed hearing aid dispenser when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 2. Rescind rule 645—125.1(147,154A) and adopt the following **new** rule in lieu thereof:

645—125.1(147,154A) License fees. All fees are nonrefundable.

125.1(1) Application fee for a license to practice by examination, endorsement, or reciprocity is \$156.

125.1(2) Examination fee (check or money order made payable to the International Hearing Society) is \$95.

125.1(3) Renewal of license fee is \$60.

125.1(4) Temporary permit fee is \$42.

125.1(5) Late fee is \$60.

125.1(6) Reactivation fee is \$120.

125.1(7) Duplicate and reissued license and wallet card fee is \$20.

125.1(8) Verification of license fee is \$20.

125.1(9) Returned check fee is \$25.

125.1(10) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapter 154A.

[Filed 10/31/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4695B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners amends Chapter 304, "Discipline for Speech Pathologists and Audiologists," and Chapter 305, "Fees," Iowa Administrative Code.

These amendments rescind rule 645—305.1(147) and adopt a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board pre-noticed and noticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4497B**. A public hearing was held on October 4, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding subrule 304.2(26) of the discipline rules which includes a reference to "lapsed license" which should

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

be removed since there is no longer a lapsed license status. The Board amended subrule 304.2(26) to correct the rule language.

These amendments were adopted by the Board of Speech Pathology and Audiology Examiners on November 4, 2005.

These amendments will become effective December 28, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 304.2(26) as follows:

304.2(26) Representing oneself as a licensed speech pathologist or audiologist when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 2. Rescind rule 645—305.1(147) and adopt the following **new** rule in lieu thereof:

645—305.1(147) License fees. All fees are nonrefundable.

305.1(1) License fee for license to practice speech pathology or audiology, temporary clinical license, licensure by endorsement, or licensure by reciprocity is \$120.

305.1(2) Biennial license renewal fee for each biennium is \$96.

305.1(3) Late fee for failure to renew before expiration is \$60.

305.1(4) Reactivation fee is \$156.

305.1(5) Duplicate or reissued license certificate or wallet card fee is \$20.

305.1(6) Verification of license fee is \$20.

305.1(7) Returned check fee is \$25.

305.1(8) Disciplinary hearing fee is a maximum of \$75.

305.1(9) Temporary clinical license renewal fee is \$60.

305.1(10) Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

[Filed 11/4/05, effective 12/28/05]

[Published 11/23/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/05.

ARC 4678B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80A.15, the Department of Public Safety hereby rescinds Chapter 2, "Bail Enforcement, Private Investigation and Private Security Businesses," and adopts new Chapter 121, "Bail Enforcement, Private Investigation, and Private Security Businesses," Iowa Administrative Code.

Iowa Code chapter 80A establishes licensing and regulation of bail enforcement, private investigation, and private security businesses by the Department of Public Safety. Iowa Code section 80A.15 authorizes the Commissioner of Public Safety to establish rules to carry out the requirements of Iowa Code chapter 80A. These rules are currently in 661—Chapter 2.

Amendments to 661—Chapter 2 were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4226B**. A public hearing on these proposed amendments was held on July 1, 2005. No comments were received on the proposed amendments at the hearing or otherwise. The proposed amendments included amendments to Chapter 2 that were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on May 25, 2005, as **ARC 4180B**. The amendments published as **ARC 4180B** became effective May 1, 2005.

The following changes proposed in the Notice of Intended Action are included in the rules adopted herein:

- An exemption to licensure requirements is added for persons who are contractors with the federal government and employees of those contractors. This is a result of two federal court cases which held that a state may not subject federal contractors to licensing requirements which give the state a virtual power of review over the federal determination of responsibility and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder.

- A previous requirement for a written examination was deleted in the emergency rules which were adopted effective May 1, 2005, and is omitted here.

- The time after which a license application is deemed to be abandoned is reduced from one year to six months.

- The existence of domestic abuse protection orders, inclusion on any sex offender registry, and arrest warrants are classified as elements to be considered when determining moral character.

- The act of taking tickets is reclassified from an activity requiring licensure to an unlicensed activity.

- The temporary denial or suspension of a licensee or employee or applicant thereof is provided for when there is pending action that could disqualify the licensee or employee.

- The Department is allowed to retain fees for an abandoned application, rather than to refund them.

- The number of data elements required on an employee identification card is reduced.

In addition, Chapter 2 is rescinded and a new Chapter 121 governing licensing of bail enforcement, private investigation, and private security businesses is adopted. Renumbering these rules into a new chapter is part of an ongoing effort to reorganize the administrative rules of the Iowa Department of Public Safety to make them more accessible and understandable. Additional editorial changes have been made in the new chapter. Provisions for temporary licenses have been removed in new subrule 121.4(6). The subrule now reads as follows:

"121.4(6) Proof of financial responsibility. Proof of financial responsibility shall be given by filing a certificate of insurance from a licensed insurance company demonstrating coverage for general liability, completed operations and personal injury. Personal injury insurance shall include coverage for the following groups of offenses:

"a. False arrest, detention, or imprisonment, or malicious prosecution.

"b. Libel, slander, defamation or violation of rights of privacy.

"c. Wrongful entry or eviction or other invasion of rights of private occupancy.

"The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior notice is given to the department. Licensees shall have no more than 30 days following any specified expiration date to comply with insurance requirements. The license shall be automatically re-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

voked if the licensee has not complied with the certificate of insurance requirement within the 30 days.

“EXCEPTION: Current licensees who have provided proof of financial responsibility by filing an irrevocable letter of credit as of May 1, 2003, shall be allowed to continue using that means of providing proof of financial responsibility as long as their license remains continuously valid or until such proof is replaced by liability insurance. Licensees who provide proof of financial responsibility pursuant to this exception shall continue to meet the applicable requirements established in subrule 661—121.4(5) prior to May 1, 2003.”

These amendments are intended to implement Iowa Code chapter 80A.

These amendments will become effective on January 1, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Ch 2; adopt Ch 121] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4226B**, IAB 6/8/05.

[Filed 11/3/05, effective 1/1/06]
[Published 11/23/05]

[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4676B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 692A.10, the Department of Public Safety hereby amends Chapter 83, “Iowa Sex Offender Registry,” Iowa Administrative Code.

The Department of Public Safety has operated the Iowa Sex Offender Registry since 1995, pursuant to Iowa Code chapter 692A. 2005 Iowa Acts, House File 619, made several changes in Iowa Code chapter 692A, which are implemented herein. The changes include the following:

- A definition of “residence” is added.
- The definition of “relevant information” is amended to include the results of risk assessments.
- Amendments are made to several provisions related to a new statutory requirement that the photograph of a registrant be updated at least annually and more often at the discretion of a sheriff.
- Provisions related to requests for information about whether a specific individual is registered are amended to reflect new statutory requirements that such requests, which are directed to sheriffs or police departments, may be in writing, in person, or by telephone.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on July 20, 2005, as **ARC 4357B**. A public hearing on the proposed amendments was held on September 12, 2005. No comments were received either at the public hearing or otherwise.

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on July 20, 2005, as **ARC 4358B**. The amendments adopted here are identical to those Adopted and Filed Emergency and proposed in the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2005 Iowa Acts, House File 619.

These amendments will become effective on January 1, 2006, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [83.2 to 83.4] is being omitted. These amendments are identical to those published under Notice as **ARC 4357B** and Adopted and Filed Emergency as **ARC 4358B**, IAB 7/20/05.

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ARC 4675B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of 2005 Iowa Acts, House File 619, sections 4 and 9, the Department of Public Safety hereby adopts Chapter 156, “DNA Database,” Iowa Administrative Code.

2005 Iowa Acts, House File 619, division I, provides for the establishment and administration by the Iowa Division of Criminal Investigation of a DNA database containing DNA records from all persons required by the legislation to provide a DNA sample. This provision represents a substantial expansion of the state's DNA database, which has been subject to administrative rules adopted by the Attorney General. 2005 Iowa Acts, House File 619, assigns responsibility for rule making to the Department of Public Safety and the Division of Criminal Investigation and sets out specific subjects to be included in the rules. This rule making carries out those provisions.

These rules were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on July 20, 2005, as **ARC 4360B**. They were also adopted through emergency procedures effective July 1, 2005. The emergency rules were published in the Iowa Administrative Bulletin on July 20, 2005, as **ARC 4361B**.

A public hearing on the proposed rules was held on September 12, 2005. No comments were received on the proposed rules at the hearing or otherwise.

The rules adopted herein are identical to those proposed in the Notice of Intended Action and to the emergency rules, with the exception of changes to one rule. Rule 661—156.5(81GA, HF619) has been divided into subrules, the mailing address for samples in subrule 156.5(1) has been corrected, and an exception has been added to subrule 156.5(1) indicating that samples may be sent to other addresses if the Division of Criminal Investigation Criminalistics Laboratory so instructs.

These rules are intended to implement 2005 Iowa Acts, House File 619, sections 4 and 9.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

These rules become effective on January 1, 2006, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 156
DNA DATABASE

661—156.1(81GA,HF619) Establishment of DNA database. There is established a DNA database within the division of criminal investigation criminalistics laboratory.

These rules govern the administration of the DNA database and the collection, submission, analysis, identification, storage, disposition, and expungement of DNA records gathered for the DNA database. These rules do not apply to the collection and handling of DNA samples gathered as evidence in the course of criminal investigations.

661—156.2(81GA,HF619) Definitions. The following definitions apply to rules 661—156.1(81GA,HF619) through 661—156.10(81GA,HF619):

“Administrator” means the administrator of the division of criminal investigation criminalistics laboratory.

“Commissioner” means the commissioner of public safety.

“Database” means the DNA database located in the division of criminal investigation criminalistics laboratory.

“Department” means the Iowa department of public safety.

“Director” means the director of the division of criminal investigation.

“Division” means the division of criminal investigation (DCI).

“DNA” means deoxyribonucleic acid.

“Expungement” means the removal of information from the DNA database, effectively severing any ability to link a DNA profile and an individual.

“Laboratory” means the division of criminal investigation criminalistics laboratory.

661—156.3(81GA,HF619) Administration of DNA database. The DNA database shall be under the direct supervision of a supervising criminalist employed by the laboratory and designated by the administrator.

661—156.4(81GA,HF619) Collection of DNA samples. Samples of DNA shall be collected from any person required to submit a sample pursuant to the provisions of 2005 Iowa Acts, House File 619.

156.4(1) The sample shall be collected by the agency to which custody or responsibility for supervision has been assigned by the court issuing the sentencing order.

156.4(2) Each DNA sample shall be collected as soon as practical after an agency assumes custody or supervision of the person required to submit the DNA sample and shall be submitted to the laboratory in accordance with rule 661—156.5(81GA,HF619).

156.4(3) Each DNA sample shall be collected using a DNA collection kit provided by the laboratory, following the instructions provided for the kit by the laboratory.

EXCEPTION: A DNA sample may be collected without the use of a DNA collection kit provided by the laboratory. If a sample is collected without the use of a kit, the person submitting the sample shall include a signed and dated statement describing the collection procedure.

661—156.5(81GA,HF619) Submission of DNA samples.

156.5(1) All samples collected for inclusion in the DNA database should be submitted to the following address:

Iowa DCI Criminalistics Laboratory

State Capitol

1015 East Grand Avenue

Des Moines, Iowa 50309-9672

EXCEPTION: Any sample submitted in a package with a preprinted mailing address or with a mailing label with a preprinted address, when such package or label has been provided by the Division of Criminal Investigation Criminalistics Laboratory, shall be mailed to the preprinted address. Any other sample shall be mailed in accordance with instructions provided by the Division of Criminal Investigation Criminalistics Laboratory.

156.5(2) Each sample submitted shall be accompanied by a completed DNA sample donor identification form included in the DNA collection kit provided by the laboratory. If the sample is submitted without the donor identification form, the sample shall be accompanied by a statement signed and dated by the person submitting it, with at least the following information identifying the subject of the DNA sample: full name, date of birth, and a clear fingerprint. Additional identifying information, such as the social security number of the person providing the sample or identifying numbers assigned by state agencies, shall be provided if available.

661—156.6(81GA,HF619) Analysis of DNA samples.

Samples of DNA submitted to the laboratory shall be analyzed by laboratory personnel and the results of the analysis entered into the database in accordance with the provisions of “Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories,” published by the DNA Advisory Board to the Federal Bureau of Investigation, April 1999.

EXCEPTION: Analysis of DNA samples may be conducted by other laboratories under contract with the department, with the approval of the administrator. Any other laboratory conducting analysis of DNA samples for inclusion in the database shall comply with the requirements and procedures to which the division of criminal investigation criminalistics laboratory is subject under this rule.

661—156.7(81GA,HF619) Identification of DNA samples.

Each sample of DNA submitted for inclusion in the database shall be identified by a unique number that will reference the full name of the person whose sample is submitted, the person’s date of birth, and a clear fingerprint taken from the person.

661—156.8(81GA,HF619) Storage of DNA samples.

Samples of DNA submitted for inclusion in the database shall be stored under normal office conditions.

661—156.9(81GA,HF619) Disposition of DNA samples.

Any DNA sample submitted to the laboratory for inclusion in the database shall be retained for at least 30 days after the sample has been analyzed and the results of the analysis entered into the database. Samples may be destroyed 30 days after entry into the database.

661—156.10(81GA,HF619) Expungement of DNA samples.

156.10(1) A person whose DNA record has been included in the database may request expungement of the DNA record from the database based upon the reversal on appeal or dismissal of the case of the person’s conviction, adjudication, or civil commitment that caused the submission of the DNA sample. The request shall be in writing and shall include a certified copy of the final court order reversing the conviction.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

tion, adjudication, or civil commitment; a certified copy of the dismissal; and any other information necessary to ascertain the validity of the request. The request shall clearly state that it is a request to expunge a record from the DNA database and shall state the specific basis for the request.

A request to expunge the DNA record shall be addressed as follows:

Administrator
Iowa Division of Criminal Investigation
Criminalistics Laboratory
2240 S. Ankeny Blvd.
Ankeny, Iowa 50023-9093

156.10(2) Action on expungement request.

a. The division, upon receipt of a written request that validates reversal on appeal of a person's conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to 2005 Iowa Acts, House File 619, section 3, subsection 3, paragraph "b," shall expunge all of the DNA records and identifiable information of the person in the database. The person or the person's representative shall be notified upon completion of such action.

b. If the division determines that the person is otherwise obligated to submit a DNA sample, the DNA record shall not be expunged.

c. If the division denies an expungement request, the division shall notify the person requesting the expungement of the decision not to expunge the DNA record and the reason supporting the decision. A person whose request to expunge a DNA record from the database is denied may appeal that decision to the commissioner within 30 days of the date of the letter communicating the denial. Appeals shall be treated as requests for contested case proceedings, and such proceedings shall be subject to the provisions of rules 661—10.301(17A) through 661—10.332(17A), except that such requests shall be addressed as follows:

Commissioner, Iowa Department of Public Safety
Wallace State Office Building
Des Moines, Iowa 50319

156.10(3) A DNA record shall not be expunged pursuant to this rule if expungement or destruction of the DNA record would destroy evidence related to another person.

These rules are intended to implement 2005 Iowa Acts, House File 619, division I.

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ARC 4677B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby adopts Chapter 174, "Retail Sales of Pseudoephedrine," Iowa Administrative Code.

2005 Iowa Acts, Senate File 169, provides for the regulation of substances which are precursors to amphetamine and methamphetamine, including pseudoephedrine. Pseudo-

ephedrine is widely used in medications intended for treating colds, allergies, and hay fever. It is also used in the manufacture of methamphetamine. 2005 Iowa Acts, Senate File 169, section 3, requires retail outlets which sell products containing pseudoephedrine to maintain a logbook of sales of these products, in which the following items are recorded for each such purchase: (1) purchaser's signature, "legibly" written, and (2) purchaser's printed name and address. The statute further provides that "the logbook may be kept in electronic format upon approval of the department of public safety." These rules provide the criteria for such approval. Also, a provision included in section 4 of 2005 Iowa Acts, Senate File 169, requires that anytime a city or county imposes a civil penalty upon a retailer for violating the provisions of the Act, a report must be made to the Department of Public Safety within 30 days. These rules include procedures for making the required reports.

These rules were proposed in a Notice of Intended Action, published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4228B**. A public hearing on the proposed rules was held on July 1, 2005. Comments were received at the hearing and in writing from a representative of the Iowa Grocery Industry Association concerning whether the language of rule 661—174.1(81GA,SF169) regulates the circumstances under which a retailer is required to provide to peace officers logbooks of purchases of products containing pseudoephedrine. The rule is not intended to do so, and a note has been added to clarify this. With this exception, the rules adopted herein are identical to those proposed in the Notice of Intended Action.

These rules were also Adopted and Filed Emergency effective May 21, 2005. The emergency rules were published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4228B** and were identical to the proposed rules published in the Notice of Intended Action.

These rules are intended to implement 2005 Iowa Acts, Senate File 169.

These rules become effective on January 1, 2006, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 174**RETAIL SALES OF PSEUDOEPHEDRINE**

661—174.1(81GA,SF169) Electronic logbooks. A logbook of retail sales of products containing pseudoephedrine, as required in 2005 Iowa Acts, Senate File 169, may be recorded in any electronic format, provided that the retailer maintaining the logbook provides to any peace officer a printed copy of the information required to be maintained in the same manner as would be provided if the logbook were maintained on paper.

NOTE 1: Information required to be recorded in the logbook includes the legible signature of the purchaser and the printed name and address of the purchaser.

NOTE 2: This rule applies only to the content of the information provided to a peace officer from a logbook, not to the conditions or circumstances under which information from a logbook is provided to a peace officer.

661—174.2(81GA,SF169) Reporting of civil penalties. Within 30 days of the assessment of a civil penalty upon a retailer or employee of a retailer of products containing pseudoephedrine for a violation of the provisions of 2005 Iowa Acts, Senate File 169, the city or county which has enforced the civ-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

il penalty shall report the following information to the Director, Iowa Division of Narcotics Enforcement, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319:

1. Name and address of the retailer.
2. Name and birth date of the employee, if the civil penalty was assessed against an employee. If the assessment was against more than one employee, the name and birth date of each employee subject to the assessment shall be reported.
3. Date of the violation.
4. Description of the violation.
5. Amount of the civil penalty assessed.

These rules are intended to implement 2005 Iowa Acts, Senate File 169.

[Filed 11/3/05, effective 1/1/06]

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ARC 4679B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 52.5 and 47.1, the Secretary of State hereby adopts amendments to Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

The amendments make editorial changes to Chapter 22, provide additional security guidance to county commissioners to improve the safety of voting equipment, make changes to incorporate requirements of the Help America Vote Act (HAVA) and provide programming and vote-counting procedures for the newly certified Election Systems & Software voting system.

Amendments to Chapter 22 to provide programming and vote-counting procedures for Election Systems & Software's Unity 2.5 voting system appear in Items 22, 25, and 31.

Amendments to Chapter 22 to implement requirements of HAVA appear in Items 7, 19 and 20. Item 7 adds the definition of "voting system" found in HAVA to Chapter 22. Item 19 requires all county commissioners of elections to provide to absentee voters in federal elections only the instructions provided by the State Commissioner of Elections. Section 301 of HAVA requires all voting systems, including absentee balloting in person or by mail, to notify each voter of the effect of casting multiple votes for an office and to provide the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error). To implement this requirement, the State Commissioner will provide the appropriate instructions for all federal elections. Item 20 rescinds the existing absentee instructions without replacing them. This amendment will permit the State Commissioner the ability to respond quickly to any changes in Iowa law that will affect the absentee ballot instructions. HAVA requires election officials to provide at least one voting device that is accessible to persons with disabilities in each polling place. To achieve this requirement, many counties will use voting systems that include precinct optical scan devices and direct recording electronic voting

machines in each polling place. Item 32 provides direction for using these blended voting systems.

Amendments to Chapter 22 to improve election security appear in Items 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 18 and 20. These amendments require each county to have a written security plan for its voting system. Procedures for computer security, acceptance testing of voting equipment, preelection testing of voting equipment, and emergency procedures are included.

Amendments to Chapter 22 to provide uniform election procedures appear in Items 8, 9, 15, 16, 17, 23, 24, 28, 29 and 30. These amendments include procedures for secrecy folders, handling ballots returned to voters by precinct optical scan devices at the polls, closing the polls, counting write-in votes, central count optical scan devices used for absentee and provisional ballots, and handling ballots abandoned by voters in voting machines.

Editorial changes and additions to Chapter 22 appear in Items 1, 6, 7, 21, 24, 26, 27, 29, and 33. These amendments include changing the title of Chapter 22 from "Alternative Voting Systems" to "Voting Systems," and improving definitions to harmonize language in the rules with commonly used terms. For improved clarity, the amendments also incorporate into the procedural rules in Chapter 22 rules that also appear elsewhere.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2005, as **ARC 4546B**. No public hearing was requested or held. Several county commissioners of elections submitted comments on the proposed amendments. The following changes were made, based upon comments received or to further clarify the proposed amendments:

Items 3 and 4. Testing requirements were modified to clearly require testing of audio ballots, modems and the readability of printed ballots, regardless of the orientation in which the ballot enters the scanner.

Items 15 and 22. The rules prescribing the activities of precinct election officials in handling ballots rejected by precinct count optical scanning devices were modified to permit voters to operate the override device if the voter chooses not to correct a ballot.

Item 22. The voting instructions to be printed on the ballot were simplified.

Item 28. The requirements for providing paper ballots to polling places where voting machines are used were revised to include the use of blended voting systems.

Item 32. The noticed rules contained a conflict in the manner of handling the combination of results of blended voting systems. Item 32 has been revised to conform to Item 22. Items 22 and 32 now require the precinct election officials to combine the results from the two devices used in a blended voting system.

Other nonsubstantive, technical corrections have also been made.

These amendments are intended to implement Iowa Code chapter 52.

These amendments will become effective December 28, 2005.

The following amendments are adopted.

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ITEM 1. Amend **721—Chapter 22**, title, as follows:

CHAPTER 22
ALTERNATIVE VOTING SYSTEMS

ITEM 2. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.31(52) Acceptance testing. When the commissioner receives voting equipment from a vendor, the commissioner shall carefully examine and test the equipment to:

22.31(1) Verify that the system delivered is certified for use in Iowa. The commissioner shall compare the voting system version numbers with the list of certified voting equipment provided by the state commissioner;

22.31(2) Verify that everything in the contract has been delivered by:

- a. Comparing a copy of the purchase contract with the items received;
- b. Making certain that all components, such as power cords, caster and keys, are included;
- c. Reviewing instruction and maintenance manuals to be sure that the correct version of each manual was provided; and

22.31(3) Verify that everything delivered actually works. The commissioner shall run a simulated election to confirm that each part of the system and the system as a whole function properly.

ITEM 3. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.39(52) Preelection testing for direct recording electronic voting machine voting equipment.

22.39(1) Automatic testing—insufficient. Some vendors provide an automatically generated test program for direct recording electronic voting machines. Although these tests provide the user with information about the internal integrity of the machine, the automatic test is not an adequate preelection test; it does not include testing to show that the programming for the current election is correctly done; and it does not test the operation of the voter-operated functions of the machine.

22.39(2) Preelection test plan. Before it is used in an election, the commissioner shall subject the direct recording electronic voting machine to the following tests.

a. Automated test. Run the automated test on each machine and record the results.

b. Logic test. Verify that the correct visual ballot (and audio ballot, if any) is installed for each direct recording electronic voting machine to be used in the election.

c. Touch test. As each visual ballot (and audio ballot, if any) is reviewed, select and then deselect each candidate to verify that the candidate can be selected as a choice; leave the first (or last or other standard choice) selected to provide a check of the summary report when the test is closed; and save this result for a report of the touch-test results.

d. Public test. Select at least one direct recording electronic voting machine for each ballot style and test every office, judge and public measure on the ballot; and have copies of the touch-test results and the automated tests available for inspection.

The commissioner shall compile the results of all tests to demonstrate the election reporting function.

22.39(3) Electronic transmission. If the results will be transmitted electronically from the precincts on election night, the commissioner shall test each modem before election day.

ITEM 4. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.42(52) Preparing test decks. Test ballots for optical scan voting equipment shall test the reporting of votes for every office and public measure on the ballot at the election. Commissioners may use additional test methods to supplement the process described in this rule.

22.42(1) Requirements for all hand-marked test decks. The commissioner shall:

- a. Never erase errors and never use correction fluid or correction tape to cover errors. Replace the ballot instead.
- b. Fill in each oval completely using the recommended pen or pencil.

c. Mark each ballot “Test Ballot.”

22.42(2) Single-vote test deck. The commissioner shall use at least five ballots for this test deck. More ballots may be needed if the election includes rotated offices. The commissioner shall perform the following:

a. On both sides of each ballot, fill in the oval for the same candidate in each office. Always mark the first candidate listed under the office title, unless the candidates are rotated from precinct to precinct.

b. If the names of candidates are rotated, always mark the candidate whose last name comes first alphabetically. Mark one ballot for each rotation.

c. For public measures and judges, fill in the oval for the “yes” choice.

d. On general election ballots, always leave the straight party choice blank. (See subrule 22.42(5) for testing straight party voting.)

e. Check each ballot to be sure it is correctly marked for this test. Count the ballots. The first candidate in each office should have the same number of votes as there are ballots. An office for which more than one person is to be elected will have undervotes reported. There should be no overvotes in this deck.

f. Scan the ballots and then print a report that shows all offices, public measures and judges, including undervotes and overvotes.

g. Scan all ballots in this deck in each of the four possible orientations:

- (1) Face up, head first.
- (2) Face down, head first.
- (3) Face up, feet first.
- (4) Face down, feet first.

22.42(3) Random test deck. The commissioner shall use this deck to test each oval that was not tested in the single-vote test deck and determine a systematic number of votes for each candidate in each office, such as two votes for the second candidate listed, three votes for the third candidate, etc. Using the report showing the results of the single-vote test deck as a guide, the commissioner shall record the planned number of votes for each candidate and record the planned number of overvotes and undervotes in the appropriate places on the report. The basic plan is as follows:

a. Mark votes for each candidate except the one that was voted for in the single-vote test deck.

b. For offices without candidates (these will have the same number of write-in lines as there are candidates to be elected), determine a unique, varying combination of votes and undervotes for the office.

c. For offices in which the voter may vote for more than one candidate, vote for the maximum allowed.

d. Include undervotes for all offices with only one candidate.

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- e. If there is only one office on the ballot, do not leave the office unmarked. The scanner will reject the ballot as blank.
- f. For a single-precinct election, use at least two ballots in the random test deck.
- g. Mark the test ballots according to the plan and check the marks on the ballots against the plan.
- h. Scan the ballots and then print a report that shows all offices, public measures and judges, including undervotes and overvotes. Check the report against the plan. If there are differences, hand-tally the ballots to be sure that the ballots were marked according to the plan.

22.42(4) Overvote test. For an overvote test, the commissioner shall:

- a. Mark all voting targets on one ballot.
- b. On a second ballot, overvote each office by one vote.
- c. Add to the manual tally the number of overvotes in this test. The tally for this part of the test deck will show no votes for any candidate. (Not all vendors report overvotes in the same way.)

22.42(5) Straight party test for general elections. For a straight party test, the commissioner shall:

- a. Use at least two ballots for each straight party option. For each set of ballots:
 - (1) Mark only a straight party vote on one ballot.
 - (2) On the second ballot, mark the same straight party option and, for each office affected by the straight party vote, mark one candidate who is not a candidate for the selected party.
 - (3) If the election includes an at-large county supervisor race with more than one person to be elected, mark a ballot with a straight party vote and then vote for one candidate from the same political party as the straight party vote. Only this separately marked candidate should receive a vote.
 - b. Test each ballot separately. For each ballot:
 - (1) Scan the ballot and print a report showing the results for the whole ballot.
 - (2) Check the report to be sure that the votes marked were counted correctly. When the straight party choice is marked and the voter also marks one or more individual candidates for a partisan office, the straight party vote is ignored for that office. This process applies to any mark for any candidate, write-in selection or overvote in that office.
 - c. Compile the results of the straight party deck.

22.42(6) Combined test deck. The commissioner shall run the combined test decks and compare the results to the test plan. The scanner results and the hand tally must match.

ITEM 5. Amend 721—Chapter 22 by adding the following new rule:

721—22.50(52) Voting system security. Each county shall have a written security policy. The policy shall include detailed plans to protect the election equipment and data from unauthorized access. The policy shall describe the methods to be used to preserve the integrity of the election and to document the election process.

22.50(1) Staff access. The security policy shall describe who shall have access to the voting equipment.

22.50(2) Computers. For security purposes, computers used in the commissioner’s office to prepare ballots and voting equipment programs or to compile and report election results should not be used for any other function and should not be linked to any computer network or to the Internet.

- a. If the election computers are linked to a network or to the Internet, the commissioner shall use a firewall to filter network traffic. Data transmissions over the Internet shall be encrypted and password-protected. Information posted to a

Web site shall not be considered transmission of data over the Internet.

b. Access shall be limited to persons specified by the commissioner in the written security policy. The level of access shall be included in a written security policy.

(1) Uniqueness. Every ID and password shall be unique. The creation of generic or shared user IDs is specifically prohibited. Each user shall have exactly one user ID and password, except where job requirements necessitate the creation of multiple IDs to access different business functions.

(2) Authority. Each user shall be granted only the level of access specifically required by user’s job. Use of “Administrator,” “Super User,” “Security Administrator,” or “SA” levels of authority shall be severely restricted.

(3) Generic user IDs. Staff members with generic user IDs are not allowed to sign on to voting systems.

(4) Password standards.

Account Policy	Recommended Setting
Maximum Password Age	90 days
Minimum Password Age	2 days
Minimum Password Length	8 characters
Enforced Password History	6 passwords (last 6 cannot be used)
Account Lockout (number of unsuccessful log-on attempts)	3 bad attempts
Account Lockout Duration	6 hours
Reset Account Lockout Counter After	6 hours

22.50(3) Evacuation. If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

- a. Keep people safe. The officials shall make sure that all voters and other persons are safely out of the polling place.
- b. Protect critical election documents and materials. After the safety of the voters and others has been secured, the officials shall remove or secure the following:
 - (1) The ballot box or electronic voting device containing voted ballots.
 - (2) The keys to the voting equipment and any memory cards, cartridges or other data storage devices containing the election information.
 - (3) All unvoted ballots.
 - (4) The precinct election register.
 - (5) Signed declarations of eligibility.
 - (6) The tabulating device.

ITEM 6. Amend **721—Chapter 22**, the division heading preceding rule 721—22.100(52), as follows:

SPECIAL PAPER BALLOT OPTICAL SCAN
VOTING SYSTEMS

ITEM 7. Amend rule **721—22.101(52)** as follows:
Amend the following definition:

“Ballot” means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more special paper ballots.

Adopt the following new definitions in alphabetical order:
“Optical scan ballot” means a special paper ballot.

“Optical scan voting system” means a tabulating device that reads ballots by detecting voters’ marks using reflected or absorbed light. An optical scan voting system may be

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used to count ballots either at the polling place (precinct count) or at a counting center (central count). Optical scan ballots are special paper ballots designed for use with an optical scan voting system.

“Voting system” means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). “Voting system” also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

ITEM 8. Amend subrule 22.102(3) to read as follows:

22.102(3) The voting target shall be printed opposite each candidate’s name and write-in line on the special paper ballot, and opposite the “yes” and “no” for each public measure and judge. Wherever possible, the voting target shall be printed on the left side of the name or “yes” and “no”. *The voting target shall be an oval unless the voting system requires a target with a different shape.*

ITEM 9. Amend rule 721—22.102(52) by adding the following **new** subrules:

22.102(8) No office, including a judicial office, or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

22.102(9) Ballots shall be stored in a locked room or storage area. Access to the storage area shall be restricted to those persons identified in the election security plan. Throughout the election process, the commissioner shall keep accurate records of the number of each type of ballot or ballot style printed for the election. This record shall include the number of ballots:

- a. Ordered from the printer.
- b. Printed and delivered by the printer to the commissioner. The commissioner may store sealed, unopened packages of ballots without verifying the number of ballots in the package.
- c. Used for testing as required by Iowa Code sections 52.9 and 52.35 and rule 721—22.41(52).
- d. Held in reserve for emergencies as required by Iowa Code section 49.66.
- e. Delivered to and returned from the polling places as required by Iowa Code sections 49.65 and 50.10.
- f. Used for absentee voting, including any spoiled ballots.
- g. Issued as sample ballot to the public as permitted by Iowa Code section 43.30.
- h. Photocopied ballots used pursuant to Iowa Code section 49.67.
- i. Printed by the commissioner using any voting system program, such as Election Systems & Software’s Ballot on Demand program.

ITEM 10. Amend rule 721—22.200(52) to read as follows:

721—22.200(52) Security.

22.200(1) At least one tabulating device shall be provided at each precinct polling place for an election. *If the tabulating device is delivered to the polling place before election day, it shall be secured against tampering or kept in a locked room.*

22.200(2) The maintenance key or keys used to gain access to the internal parts of the tabulating device shall be kept in a secure place and in a secure manner, in the custody of the commissioner. *The On election day, the key used to obtain the paper printout shall be kept by the chairperson of the precinct election officials in a secure manner. Small electronic devices, such as memory cards, cartridges or other data storage devices used to activate tabulation equipment or to store election information, shall be in the custody of the precinct chairperson when the devices are not installed on the voting equipment.*

ITEM 11. Amend rule 721—22.200(52) by adding the following **new** subrule:

22.200(3) If a password is needed for precinct election officials to have routine access to the tabulating device during election day, the password shall be changed for every election. The commissioner shall restrict access to the password in the written security policy.

ITEM 12. Amend rule 721—22.201(52) to read as follows:

721—22.201(52) Programming and testing the tabulating devices for precinct count systems.

22.201(1) All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed to ensure that all votes will be counted in accordance with the laws of Iowa. Tabulating devices shall be programmed to ~~reject~~ *return to the voter any* ballots:

- a. That are not coded to be used in the precinct.
- b. That are read as blank.
- c. That have one or more overvoted offices or public measures.

~~If a ballot is rejected for any of the reasons above, the voter shall be offered the opportunity to correct the ballot. The defective ballot shall be marked “Defective” and kept with other spoiled ballots. If the voter is not available, or declines to correct the ballot, the ballot shall be inserted into the precinct counter without further examination.~~

22.201(2) All tabulating devices shall be tested before each election in accordance with Iowa Code section 52.38. In addition to any certification produced on the printout, the paper printout produced in testing the tabulating device shall be signed at the end where the tape will be detached from the machine by the person conducting the test and by any observers present at the test. The tape shall be torn or cut across the *signature signatures*, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester’s signature, shall be delivered to the precinct election officials to display throughout election day with the report showing all counters have been reset to zero in the precinct. Immediately after the test is finished, the tabulating device, the ballot box, and the door to any compartment containing the programming for the election shall be sealed or locked by the person performing the test.

ITEM 13. Amend rule 721—22.231(52) to read as follows:

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721—22.231(52) Emergency procedures ballot box or bin. Each precinct shall be furnished with an emergency ballot box ~~which or bin that~~ is suitably equipped with a lock and key or numbered, tamperproof seal. In the event of power failure or malfunction of the tabulating device, ~~voted ballots which have been voted~~ shall be deposited in the locked or sealed emergency ballot box or bin. *A precinct election official shall put the ballot into the emergency ballot box or bin for the voter.* The voted ballots so deposited may be removed from the locked emergency ballot box or bin and tabulated before the polls close whenever a properly functioning tabulating device becomes available, or the voted ballots so deposited may be removed and counted *electronically or manually* immediately after the polls are closed. *If the ballots are counted manually, the precinct election officials shall follow the requirements of 721—Chapter 26.*

ITEM 14. Amend rule 721—22.232(52) to read as follows:

721—22.232(52) Manner of voting. After the precinct election official has endorsed a ~~special paper~~ ballot, the official shall instruct the voter to use only the marker provided. The ~~special paper~~ ballot shall be inserted in a secrecy envelope folder and given to the person who is entitled to receive the ballot in accordance with the provisions of Iowa Code section 49.77.

22.232(1) *The precinct officials shall provide each voter with a secrecy folder. The commissioner may print basic ballot marking instructions on the secrecy folder. It is not necessary to print information on secrecy folders that will limit the usefulness of the secrecy folder to one or more elections or election types.* Upon receipt of the ballot in the secrecy envelope folder, the voter shall retire alone to a voting booth and without delay mark the ~~special paper~~ ballot.

22.232(2) The voter shall vote upon the ~~special paper~~ ballot by marking the appropriate voting target with a ~~voting device or a #2~~ *an appropriate pen or pencil* in the manner described in the instructions printed on the ballot.

When a write-in vote has been cast, the ~~special paper~~ ballot must also be marked in the corresponding voting target in order to be counted.

22.232(3) After marking the ballot, the voter shall replace it in the secrecy envelope folder and leave the voting booth at once.

22.232(4) The voter shall at once deposit the ballot, still enclosed in the secrecy envelope folder in the tabulating device so that the ~~special paper~~ ballot is automatically removed from the secrecy envelope folder, the votes tabulated, and the ~~special paper~~ ballot deposited in the ballot box.

22.232(5) If the tabulating device is ~~not~~ equipped with a mechanism that will not permit more than one ballot to be inserted at one time, the voter *may insert the ballot into the tabulating device. If the tabulating device cannot detect and reject multiple ballots, the voter shall be required to hand the ballot in the secrecy envelope folder to the precinct election official without revealing any of the marks on the ballot.* The precinct election official shall at once deposit the ballot in the manner described in subrule 22.232(4).

ITEM 15. Amend rule 721—22.232(52) by adding the following **new** subrules:

22.232(6) If the tabulating device returns a ballot, the precinct official attending the device shall ask the voter to wait. Without examining the ballot, the official shall enclose the returned ballot in a secrecy folder. If necessary, the official shall read to the voter the information provided by the device about the reason the ballot was returned. The official shall

offer the voter the opportunity to correct the ballot. The precinct official shall mark the returned ballot “spoiled” and shall also tear or mark the ballot so that the tabulating device cannot count it. The voter may use the spoiled ballot as a guide for marking the corrected ballot. After the voter has marked the corrected ballot, the precinct officials shall collect the spoiled ballot and keep it with other spoiled ballots.

22.232(7) If the voter who cast the returned ballot is not available, or declines to correct the ballot, the precinct official shall not mark the ballot “spoiled.” Either the voter or the official shall reset the tabulating device to accept the ballot. The voter, or the official if the voter has gone, shall insert the ballot into the precinct counter without further examination.

ITEM 16. Amend rule 721—22.240(52), introductory paragraph, to read as follows:

721—22.240(52) Results. After the polls are closed and *the tabulating device has processed* all of the ~~special paper~~ ballots, *including any ballots from the emergency ballot box or bin, have been processed by the tabulating device,* the precinct election officials shall:

ITEM 17. Amend subrules 22.240(3) and 22.240(4) to read as follows:

22.240(3) *Unlock or remove the seal on the ballot box or bin containing ballots with write-in votes and open it. The precinct officials shall remove the ballots and manually count the valid votes on any special paper ballots found in the portion(s) of the ballot box designated for unread ballots and ballots with write-in votes, and enter the votes so counted on the official tally sheet in the proper place write-in vote as required by 721—Chapter 26. The officials shall record the write-in votes in the tally list.*

22.240(4) Seal all ~~special paper~~ ballots in a transfer case to be returned to the commissioner in accordance with Iowa Code section 50.12.

ITEM 18. Amend rule 721—22.241(52) to read as follows:

721—22.241(52) Electronic transmission of election results. If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made. *If the voting system includes a data card, cartridge or other small device that contains an electronic copy of the election results, the precinct chairperson shall secure the device and ensure its safe delivery to the commissioner.*

ITEM 19. Amend rule 721—22.250(52) to read as follows:

721—22.250(52) Absentee voting instructions. Printed instructions ~~as set out in subrule 22.53(8) of this chapter~~ shall be included with the ~~special paper~~ ballot or ballots given to or mailed to each absentee voter. Written instructions to the voter shall be sent with every absentee ballot. *For federal elections, the commissioner shall use only the instructions provided by the state commissioner.*

ITEM 20. Rescind rule **721—22.251(52).**

ITEM 21. Amend rule 721—22.260(52) to read as follows:

721—22.260(52) Specific precinct count systems. Additional rules are provided for the following systems approved for use in Iowa. *Rule 721—22.261(52) applies only to the voting system indicated and is in addition to the general provisions set forth in rules 22.200(52) through 22.250(52).*

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ITEM 22. Rescind rule 721—22.261(52) and adopt in lieu thereof the following **new** rule:

721—22.261(52) Election Systems & Software Model 100—preparation and use in elections.

22.261(1) Security. The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at the polling places on election day shall be changed for each election.

b. The control key for the Model 100 shall be in the possession of the precinct chairperson during election day.

22.261(2) Configuration choices. The following selections are mandatory for all elections:

a. Maximum number of votes. The following description for each office shall be used: "Vote for no more than xx." Do not include "vote for" language for public measures or judges.

b. Ballot format. The voting target shall be printed on the left side of the candidate's name and on the left side of each "yes" and "no" choice for public measures and judges. The voting target shape shall be an oval.

c. Ballot control. In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

- (1) Overvoted ballot.
- (2) Blank ballot.
- (3) Unreadable ballot.

d. Unit control. The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

e. Reports. The following are required reports:

- (1) Opening the polls. Print the Zero Certification report.
- (2) Closing the polls. Print the poll report before transmitting the election results by modem. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text to appear at the end of the poll report:

We, the undersigned Precinct Election Officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the M100 Optical Scan tabulation device at this election. This is [not] the complete record of the ballots in the precinct. [Another set of results from the iVotronic direct recording electronic voting machine device must be added to these results for the complete results of this precinct.]

[print lines for each of the officials to sign]

Precinct Election Officials Date: ____ Time: ____

f. Reopen polls. The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

g. The commissioner shall not authorize automatic transmission of the election results immediately after closing the polls. The results shall be printed first.

22.261(3) Ballot printing. The voting target shall be an oval printed on the left side of the candidate's name and the "yes" and "no" choices for judges and public measures.

a. Format. The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the "yes" and "no" choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure or judicial office on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

b. Instructions for voters. The following instructions shall be printed on ballots:

(1) Voting mark. To vote, fill in the oval next to your choice.

 CANDIDATE NAME

 CANDIDATE NAME

(2) Straight party voting. To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions.

(3) Public measures.

Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word "Yes". To vote against a question, fill in the oval in front of the word "No".

22.261(4) System error messages. Precinct election officials shall be provided with the following list of system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner's designee for all other messages.

Overvoted ballot returned. Ask voter to reinsert ballot. If the ballot is returned again, do not look at the voter's ballot. Put it in a secrecy folder. Tell the voter that for one or more offices the scanner read more votes than the maximum number of votes allowed. To correct the error, the voter must mark a new ballot and may copy votes from the original ballot. Only if the voter agrees to mark a new ballot, write "spoiled" on the original ballot and tear off one corner to prevent it from being accepted by the scanner. Advise the voter to return to the booth and mark the new ballot. Be sure to collect the spoiled ballot before the voter leaves.

Overvoted ballot accepted. This message will appear when the scanner accepts an overvoted ballot.

Unidentified mark—check your ballot. One or more marks on the ballot are not dark enough to be seen as a vote. Do not look at the voter's ballot. Put it in a secrecy folder and return the ballot to the voter. Ask the voter to review the ballot and to darken the marks. Then the voter may put the ballot back into the scanner.

If any of the following messages appear more than twice for the same ballot, call the auditor's office to report the problem:

100—MISSED ORIENTATION MARKS/Turn Ballot Over and Try Again.

101—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

102—NO DATA FOUND/Please Reinsert Ballot After Beeps.

104—ORIENTATION SKIP ERROR.

106—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

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If any of the following messages appear, ask the voter to remove the ballot and reinsert it. If the same message appears more than twice for the same ballot, call the auditor's office to report the problem.

107—BALLOT ERROR: INVALID CC SEQUENCE.

108—BALLOT ERROR: INVALID CC TYPE.

109—BALLOT ERROR: INVALID CC SPLIT.

115—MISSED BACK ORIENTATION MARK/Turn Ballot Over and Try Again.

119—MULTIPLE BALLOTS DETECTED/Please Reinsert Ballot After Beeps. Did the voter actually try to put an extra ballot in? Is the ballot folded?

123—UNABLE TO READ TIMING BAND/Turn Ballot Over and Try Again.

124—BALLOT DRAGGED/Turn Ballot Over and Try Again.

126—BLACK CHECK: FACE DOWN HEAD EDGE/Turn Ballot Over and Try Again.

127—BLACK CHECK: FACE DOWN TAIL EDGE/Turn Ballot Over and Try Again.

128—BLACK CHECK: FACE UP HEAD EDGE/Turn Ballot Over and Try Again.

129—BLACK CHECK: FACE UP TAIL EDGE/Turn Ballot Over and Try Again.

130—POSSIBLE FOLDED BALLOT/Turn Ballot Over and Try Again.

22.261(5) Preelection testing. The voting equipment shall be tested as part of the preparation for each election.

a. Test decks generated by the Ballot on Demand test deck program are not sufficient. These decks do not include tests for straight party voting or handling overvotes.

b. Ballots of every ballot style printed for the election shall be tested to ensure that they are correctly printed and can be read by the scanner.

c. Each Model 100 shall be tested publicly before use in any election following the requirements of rules 22.41(52) and 22.42(52).

22.261(6) Record retention. The Model 100 uses a thermal printer. The maximum anticipated life span of the results from each Model 100 is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the Model 100 was used.

22.261(7) Using iVotronic and Model 100 in the same polling place. The officials shall print the vote totals from each machine after all ballots have been entered. The results from the two devices shall be added together at the polls on election night. The officials shall put each tape in the tally list. The officials may send the results from each device separately if the commissioner has authorized electronic transmission of the results.

ITEM 23. Amend 721—Chapter 22 by adding the following **new** rule under the Central Count Systems division heading:

721—22.340(52) Central count system processing. All central count scanners shall be configured to sort blank ballots and ballots containing marks in write-in vote targets for review by the resolution board. Central count scanners shall not be configured to sort ballots with overvotes. The resolution board shall follow the requirements of rule 721—subrule

26.2(2). The commissioner shall provide the resolution board with a copy of 721—Chapter 26, "Counting Votes."

ITEM 24. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.341(52) Counting absentee ballots and provisional ballots. Absentee and provisional ballot results shall be reported as a single precinct as required by subrule 22.102(7). All other procedures for tabulating absentee and provisional ballots shall be performed according to the procedures prescribed for central count systems.

ITEM 25. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.350(52) Election Systems & Software Model 650.

22.350(1) The following ballot preparation selections are mandatory for all elections:

a. Maximum number of votes. The following description for each office shall be used: "Vote for no more than xx." Do not include "vote for" language for public measures or judges.

b. Ballot format. The voting target shall be printed on the left side of the candidate's name and on the left side of each "yes" and "no" choice for public measures and judges. The voting target shape shall be an oval.

22.350(2) Reserved.

ITEM 26. Amend rule 721—22.431(52), introductory paragraph, to read as follows:

721—22.431(52) Temporary use of paper printed ballots in voting machine precincts. The county commissioner of elections shall furnish *a supply of printed ballots* to each precinct where voting machines, *including direct recording electronic machines*, are to be used for any election ~~a supply of paper ballots~~.

ITEM 27. Amend subrule 22.431(1), introductory paragraph, to read as follows:

22.431(1) Conditions under which paper ballots shall be used. In any precinct in which voting machines are designated as the *only* method of voting for any election, a paper ballot shall be furnished to any person offering to vote, in addition to those provisions set out in Iowa Code sections 49.81 and 49.90, if:

ITEM 28. Amend subrule 22.431(4) to read as follows:

22.431(4) Counting the ballots.

a. ~~If, during the time the polls are open,~~ the problem is corrected and the voting machine or machines are found to be usable, *before the voting machine is closed*, the two precinct election officials responsible for the security of the paper ballots voted under these rules may open the closed container and record the votes which have been cast on the paper ballots on the voting machine or machines.

b. ~~In the event that it has not been possible to record the paper ballots on the machines by the time the polls are closed~~ *If it is not possible to record on the voting machine the votes on the printed ballots and the polling place does not have a precinct count optical scan device*, the precinct election officials shall manually count the paper ballots in the manner provided in Iowa Code chapter 50 *and as required by rule 721—26.61(49)*.

ITEM 29. Amend 721—Chapter 22 by adding the following **new** rule:

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721—22.432(52) Abandoned ballots. If a voter leaves the voting booth without casting the ballot, the precinct election officials shall cast the ballot without examining the face of the machine. This rule applies to all voting machines listed in 721—subrule 26.2(4).

ITEM 30. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.433(52) Prohibited uses for direct recording electronic voting machines. No direct recording electronic voting machine shall be used for any of the following purposes:

22.433(1) In-person absentee voting pursuant to Iowa Code section 53.10 or 53.11.

22.433(2) Provisional voting pursuant to Iowa Code section 49.81.

22.433(3) Curbside voting pursuant to Iowa Code section 49.90.

ITEM 31. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.463(52) Election Systems & Software iVotronic.
22.463(1) Programming.

a. The version of the iVotronic certified for use in Iowa does not include the receipt printing option. The commissioner shall not enable receipt printing.

b. At least one iVotronic used in each polling place shall be prepared for audio ballot use.

22.463(2) Instructions for write-in votes for paired offices. The following instructions shall be included:

a. To write in a vote for President and Vice President, print the name of your choice for President first, followed by the name of your choice for Vice President.

b. To write in a vote for Governor and Lieutenant Governor, print the name of your choice for Governor first, followed by the name of your choice for Lieutenant Governor.

22.463(3) Automated tests insufficient. Automated tests included in the iVotronic system are not sufficient for pre-election testing. The testing procedure prescribed in rule 22.39(52) shall be used in place of or in addition to the automated logic and accuracy test.

ITEM 32. Amend 721—Chapter 22 by adding the following **new** rule:

721—22.500(52) Blended systems. When the commissioner orders the use of precinct count optical scan and direct recording electronic voting machines in the same precinct, both components of the blended system shall be certified as part of the same voting system.

22.500(1) Accessible device. At least one of the two components shall be accessible to persons with disabilities. However, any voter may use the accessible device whether or not the person is disabled.

22.500(2) Encouraged use. Precinct election officials shall encourage the use of both components to protect the secrecy of all ballots. A single ballot cast on a voting device is not a secret ballot.

22.500(3) Combining totals. If the two devices cannot produce a single, combined report of the results of the precinct, the precinct officials shall add the totals from both devices together at the polls on election night. Precinct officials may transmit the totals electronically in a separate report for each device. The commissioner shall combine the totals for each precinct before releasing any unofficial reports.

ITEM 33. Amend **721—Chapter 22** by adopting the following **new** implementation clause:

These rules are intended to implement Iowa Code chapter 52.

[Filed 11/4/05, effective 12/28/05]

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ARC 4671B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on November 1, 2005, adopted amendments to Chapter 400, "Vehicle Registration and Certificate of Title," Chapter 401, "Special Registration Plates," Chapter 411, "Persons with Disabilities Parking Permits," Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Chapter 451, "Emergency Vehicle Permits," and Chapter 750, "Aircraft Registration," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the September 14, 2005, Iowa Administrative Bulletin as **ARC 4482B**.

These rules are amended to reflect the amendments made to Iowa Code chapter 321 by 2004 Iowa Acts, chapter 1013, and to accommodate the new computer system for registering and titling vehicles, which was activated in January 2005. 2004 Iowa Acts, chapter 1013, makes procedural changes to the registration and title application process, permits electronic transactions and repeals the requirement to submit a copy of the registration receipt when exchanging regular plates for special plates or when applying for a registration credit or refund.

These rules are also amended to streamline processes where warranted, remove form numbers and titles and use more generic descriptions for forms, correct or delete outdated language, strike language that unnecessarily repeats the Iowa Code, consolidate and simplify wording, add the Department's Internet address for vehicle-related forms and information, update citations to federal and state laws in the text of rules and in implementation clauses, and otherwise clean up the rules.

Following are descriptions of amendments that may need further explanation:

Rule 761—400.9(321) regarding security interest notations is rescinded because the statute the rule implements was repealed.

Rules 761—400.13(321) and 761—400.16(321) regarding title bonds and specially constructed and reconstructed vehicles are rescinded and rewritten to streamline the application processes and make the rules easier to understand. The requirement that an application must include exhibits, such as a pencil tracing of the vehicle identification number and a photograph of the vehicle, is eliminated. The exhibits are unnecessary because a motor vehicle investigator will examine the vehicle.

Rule 761—400.17(321) regarding remanufactured vehicles is rescinded because it is obsolete. 2005 Iowa Acts,

TRANSPORTATION DEPARTMENT[761](cont'd)

House File 216, sections 3 and 6, strike Iowa Code requirements for remanufactured vehicles.

Rule 761—400.29(321) regarding registration of vehicles that were formerly registered under Iowa Code chapter 326 is rescinded because the subject matter is covered in rule 761—400.60(321).

Rule 761—400.33(321) regarding disabled veteran plates is rescinded because the subject matter is covered in new rule 761—401.13(321).

Rule 761—400.43(321) is amended to clarify that a replacement plate fee is payable when a vehicle is registered after it was placed in storage in any month prior to the expiration of the registration.

An amendment to rule 761—400.50(321) allows a person to apply for refund of vehicle registration fees in any county, rather than the county where the vehicle was registered. Another amendment strikes language which provides for filing disapproved claims for refund with the state appeal board. Iowa Code section 25.1 does not allow the state appeal board to consider claims for refund of vehicle registration fees.

Rule 761—400.51(321) regarding the assignment of assigned identification numbers is rescinded and rewritten to streamline the process and make the rule easier to understand.

Rule 761—400.55(321) regarding damage disclosure statements is amended to delete unnecessary language and conform to 2004 Iowa Acts, chapter 1007.

Chapter 401, “Special Registration Plates,” is revised to shorten the chapter by consolidating provisions regarding late renewals, gift certificates and plate reassignments that are currently scattered throughout the chapter and by eliminating unnecessary repetition of the Iowa Code or other rules. Chapter 401 is also revised to:

- Eliminate a restriction that formerly limited the validity of gift certificates for special registration plates to 90 days.
- Eliminate the requirement that a copy of the amateur radio license must accompany an application for amateur radio call letter plates. The application form has been revised to include a space for listing the license number.

- Add new rule 761—401.13(321) on disabled veteran plates. The subject matter was formerly covered in Chapter 400. The new location should be more convenient for readers.

- Allow county treasurers to approve applications for and issue persons with disabilities plates.

- Add rule 761—401.32(321), which establishes a uniform time period of 30 days for the surrender of special registration plates when the person to whom the plates are issued is no longer eligible for the plates. This new rule also provides for the proration of registration fees when special registration plates exempt from the payment of regular registration fees are exchanged for regular registration plates.

- Add rule 761—401.33(321), which states that validation fees for special registration plates are not prorated.

- Allow lessees who have special registration plates to reassign the plates.

Chapter 411, “Persons with Disabilities Parking Permits,” is amended to specify where application forms may be obtained and returned and to eliminate unnecessary repetition of the Iowa Code. Also, rule 761—411.6(321L) is rescinded because 2005 Iowa Acts, House File 216, section 40, eliminates the requirement that the Department provide a list of names and addresses of vendors who sell wheelchair parking cones.

Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” is amended to move language on car lots and travel trailer lots from rule 761—425.3(322) to rule 761—425.17(322). The new location should be more convenient for readers. Also, rule 761—425.72(321) is amended to change the procedure for issuing demonstration permits. The \$10 permit fee is eliminated. The permit form is changed from a three-part form to a one-part form.

Chapter 451, “Emergency Vehicle Permits,” is amended to remove definitions that are not needed. Also, the expiration date of certificates of designation for privately owned, authorized emergency vehicles is changed from an annual expiration date to an expiration date of midnight on the thirty-first day of December five years from the issuance date.

Chapter 750, “Aircraft Registration,” is amended to strike a sentence on damaged aircraft that does not agree with Iowa Code section 328.21 and to update the rule on renewal notices.

These amendments do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 321, 321L, 322, 322C, and 328.

These amendments will become effective December 28, 2005.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 400, 401, 411, 425, 451, 750] is being omitted. These amendments are identical to those published under Notice as **ARC 4482B**, IAB 9/14/05.

[Filed 11/2/05, effective 12/28/05]

[Published 11/23/05]

[For replacement pages for IAC, see IAC Supplement 11/23/05.]

ARC 4674B

WORKERS’ COMPENSATION DIVISION[876]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Workers’ Compensation Commissioner hereby amends Chapter 3, “Forms,” Chapter 4, “Contested Cases,” Chapter 6, “Settlements and Commutations,” Chapter 8, “Substantive and Interpretive Rules,” and Chapter 11, “Electronic Data Interchange (EDI),” Iowa Administrative Code.

These amendments modify the existing rules regarding contested case proceedings, life expectancy tables for settlements, filing reports electronically with the agency and the reimbursement rate for transportation expense.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4522B**. Written comments were solicited until October 4, 2005. These amendments are identical to those published under Notice.

These amendments will become effective January 1, 2006.

WORKERS' COMPENSATION DIVISION[876](cont'd)

These amendments are intended to implement Iowa Code sections 17A.3(1)"b," 17A.12, 17A.15, 17A.16, 85.26(2), 85.27(1), 85.39, 85.45, 85.47, 86.8, 86.11, 86.12, 86.13, 86.17, 86.18 and 86.24(1) and (2).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.1(1), 4.3, 4.9(1), 4.9(3), 4.19(3)"a,"

4.25, 4.28(7), 6.3(1), 6.3(3), 8.1"2," 11.2] is being omitted. These amendments are identical to those published under Notice as **ARC 4522B**, IAB 9/14/05.

[Filed 11/4/05, effective 1/1/06]

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